Supreme Court, U.S.
FILED
06-106 JUL 19 2006
OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

VON RATSAVONG AND FONG SOUFHANKHAYSY,
Petitioners,

v.

BOUNPONE MENEVILAY AND SYPANOME MENEVILAY,
Respondents

On Petition for Writ of Certiorari
To The Texas Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Did the Texas District Court and the Texas Appeals Court and the Texas Supreme Court deprive Petitioner Defendant Wife Ms. Souphankhaysy of her right to substantive and/or procedural Due Process and Equal Protection of the laws by enforcing an alleged oral agreement for the sale of real estate against her when there was no evidence whatsoever that Ms. Souphankhaysy made any oral statements or oral agreement for the sale of the real estate?

2. Did the Texas District Court and the Texas Appeals Court and the Texas Supreme Court by enforcing an alleged indefinite oral agreement for the sale of real estate deprive Petitioners of their constitutional rights to not be deprived of their real property without Due Process of Law as afforded to them by the Texas and United States Constitutions.

3. Did the Texas District Court and the Texas Appeals Court and the Texas Supreme Court commit error by enforcing an alleged indefinite oral agreement for the sale of real estate in conflict with five decisions of this United States Supreme Court and in conflict with five decisions of the Texas Supreme Court.

PARTIES

The Petitioners are Von Ratsavong and Fong Soufhankhaysy, Defendants and Appellants and Petitioners in the underlying action.

The Respondents are Bounpone Menevilay and Sypanome Menevilay, Plaintiffs and Appellees and Respondents in the underlying action.

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OPINIONS BELOW

The "Judgement" of Texas 68th Judicial District Court signed December 22, 2004 is appended hereto along with the December 15, ruling from the bench (App. 1-3).

The "Judgment" of the Eighth District of Texas at El Paso Court of Appeals signed October 27, 2005 affirming the trial court is appended hereto (App. 4).

The "Opinion" of the Eighth District of Texas at El Paso Court of Appeals signed October 27, 2005 affirming the trial court is appended hereto. *Ratsavong v. Menevilay*, 176 S.W. 3d 661 (Tex. App. El Paso Oct. 27, 2005) *reh'g denied* 2005 Tex. App. LEXIS 10358 (App. 5-18).

The denial of motion for rehearing by the Eighth District of Texas at El Paso Court of Appeals made on November 23, 2005 is appended hereto (App. 19).

The denial of petition for review by the Texas Supreme Court made on April 21, 2006 is appended hereto (App. 20).

JURISDICTION

The Eighth District of Texas at El Paso Court of Appeals issued its opinion affirming the trial court's judgment on October 27, 2005. The Texas Supreme Court issued its opinion affirming the Eighth District of Texas at El Paso Court of Appeals on April 21, 2006. 28 U.S.C. § 1257 confers jurisdiction upon the Supreme Court of the United States in this matter. The Texas Supreme Court had jurisdiction of the petition for review in accordance with Tex. Gov. Code Sec. 22.001(a)(1), (a)(2), and (a)(6) and Tex. Const. Art. 5, Sec. 3. The Eighth District of Texas at El Paso Court of Appeals had jurisdiction in this case because the case was transferred to the El Paso Court of Appeals from the Dallas Court of Appeals by the Texas Supreme Court on January 21, 2005.

CONSTITUTIONAL PROVISIONS

U.S. CONST. amend. XIV, § 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Tex. Const. Art. I, § 3 (2006)

> All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Tex. Const. Art. I, § 3a (2006)

> Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This

amendment is self-operative.

Tex. Const. Art. I, § 19 (2006)

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Tex. Const. Art. XVI, § 15 (2006)

§ 15. Separate and Community Property

All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of the spouses, in relation to separate and community property; provided that persons about to marry and spouses, without the intention to defraud pre-existing creditors, may by written instrument from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interest of one spouse or future spouse in any property for the community interest of the other spouse or future spouse in other community property then existing or to be acquired, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse; spouses also may from time to time, by written instrument, agree between themselves that the income or property from all or part of the separate property then owned or which thereafter might be acquired by only one of them, shall be the separate property of that spouse; if one spouse makes a gift of property to the other that gift is presumed to include all the income or property which might arise from that gift of property; spouses may agree in writing that all or part of their community property becomes the property of the surviving spouse on the death of a spouse; and spouses may agree in writing that all

or part of the separate property owned by either or both of them shall be the spouses' community property.

STATUTES

Tex. Bus. & Com. Code § 26.01 (2005)

§ 26.01. Promise or Agreement Must Be in Writing

(a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is

(1) in writing; and

(2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.

(b) Subsection (a) of this section applies to:

(1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;

(2) a promise by one person to answer for the debt, default, or miscarriage of another person;

(3) an agreement made on consideration of marriage or on consideration of nonmarital conjugal cohabitation;

(4) a contract for the sale of real estate;

(5) a lease of real estate for a term longer than one year;

(6) an agreement which is not to be performed within one year from the date of making the agreement;

(7) a promise or agreement to pay a commission for the sale or purchase of:

(A) an oil or gas mining lease;

(B) an oil or gas royalty;

(C) minerals; or

(D) a mineral interest; and

(8) an agreement, promise, contract, or warranty of cure relating to medical care or results thereof made by a physician or health care provider as defined in Section 74.001, Civil Practice and Remedies Code. This section shall not apply to pharmacists.

Tex. Fam. Code § 3.102 (2005)
§ 3.102. Managing Community Property

(a) During marriage, each spouse has the sole management, control, and disposition of the community property that the spouse would have owned if single, including:

(1) personal earnings;

(2) revenue from separate property;

(3) recoveries for personal injuries; and

(4) the increase and mutations of, and the revenue from, all property subject to the spouse's sole management, control, and disposition.

(b) If community property subject to the sole management, control, and disposition of one spouse is mixed or combined with community property subject to the sole management, control, and disposition of the other spouse, then the mixed or combined community property is subject to the joint management, control, and disposition of the spouses, unless the spouses provide otherwise by power of attorney in writing or other agreement.

(c) Except as provided by Subsection (a), community property is subject to the joint management, control, and disposition of the spouses unless the spouses provide otherwise by power of attorney in writing or other agreement.

STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (1982). Questions presented in this petition for writ of certiorari were raised by Petitioners in the 68th District Court Of Texas in opening statements at the bench trial on December 14, 2005, which opening statements are set forth in part at App.21. Questions presented in this petition for writ of certiorari were first raised by Petitioners in the Eighth District of Texas at El Paso Court of Appeals in Petitioners brief filed on or about June 8, 2005 as issue Nos. 9, 15, 2, and 3, which issues are set forth in part at App.21-22. Questions presented in this petition for writ of certiorari were first raised by Petitioners in the Texas Supreme Court in Petitioners petition for review filed on or about February 10, 2006 as issue Nos. 3, 4, 1 and 2, which issues are set forth in part at App. 22-24. Additionally, questions presented in this petition for writ of certiorari were raised by Petitioners in the Eighth District of Texas at El Paso Court of Appeals in Petitioners motion for rehearing filed on or about November 7, 2005 as issue Nos. 9, 15, 2, and 3,which issues are set forth in part at App. 24-25. Additionally, questions presented in this petition for writ of certiorari were first raised by Petitioners in the 68th District Court Of Texas in pretrial motions for summary judgement.

The procedural background of this case is that Respondents (husband and wife Bounpone Menevilay and Sypanome Menevilay) filed a lawsuit on October 12, 2002 against Petitioners (husband and wife Von Ratsavong and Fong Soufhankhaysy) and alleged breach of an alleged oral contract to sell real property that concerned the title to

that real property. The alleged oral contract to sell real property was allegedly made between Respondent husband Bounpone Menevilay and Petitioner husband Von Ratsavong. A bench trial in the 68th Judicial District Court of Dallas County, Texas was held on December 14, 2004 and December 15, 2004 and by a Judgement dated December 22, 2004 the District Court took title of the real property from Petitioners (husband and wife Von Ratsavong and Fong Soufhankhaysy) and awarded title to the real property to Respondents (husband and wife Bounpone Menevilay and Sypanome Menevilay). The case was transferred to the El Paso Court of Appeals from the Dallas Court of Appeals by the Texas Supreme Court on January 21, 2005. The El Paso appeals court affirmed the trial court on October 27, 2005 and denied Petitioners motion for rehearing on November 23, 2005. Texas Supreme Court denied Petitioners petition for review on April 21, 2006.

B. KEY FACTS

On April 25, 1994, by warranty deed from Ricky Ashwander, title to the real property that is the subject of this suit was transferred to Petitioners Defendants Husband and Wife[1]. App. 39-43.

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[1] Petitioners Von Ratsavong and Fong Souphankhaysy are herein together sometimes referred to as "Defendant Husband and Wife" and/or "Defendants". Petitioner Von Ratsavong is sometimes herein referred to as "Defendant Husband". Petitioner Fong Souphankhaysy is sometimes herein referred to as "Defendant Wife". Respondents are Bounpone Menevilay and Sypanome Menevilay and are herein together sometimes referred to as " Plaintiff Husband and Wife" and/or "Plaintiffs". Respondent Bounpone Menevilay is sometimes herein referred to as "Plaintiff Husband". Respondent Sypanome Menevilay is sometimes herein referred to as "Plaintiff Wife". Herein "App." refers to Petitioners Appendix.

Petitioner Defendant Husband and Respondent Plaintiff Husband were friends of 30 years dating back to when they knew each other in Loas (App. 6).

Because of the prior friendship between Petitioner Defendant Husband and Respondent Plaintiff Husband, Petitioner Defendant Husband allowed Respondent Plaintiff Husband to live in the real property that is the subject of this suit based upon an oral rental agreement between Petitioner Defendant Husband and Respondent Plaintiff Husband (App. 30).

In 2001 Respondent Plaintiff Husband hired an attorney to attempt to have Petitioners deed the property that is the subject of this suit over to Respondents (App. 34). It was at this time that the friendship between Petitioner Defendant Husband and Respondent Plaintiff Husband ended. (App. 34). The real property was then valued at approximately $32,090.00 (App. 44 and 34-36). Petitioners then offered to deed the property to Respondents for $20,000, thereby giving Respondents credit for $12,000 in rent that was previously paid (App. 34 and 35). Through Respondents attorney, Respondents rejected Petitioners offer (App. 34 and 35). At trial, Respondent Plaintiff Husband's testimony was as follows:

Respondent Plaintiff Husband's 12-14-04 Trial Testimony:

[Question] How much in–strike that. I believe you testified earlier that Mr. Ratsavong said that he would sign the deed to the property at 610 Neomi over to you if you would pay him $20,000; is that correct?

[Answer] Yes. (App. 35).

The $20,000 was never paid by Respondents (App. 34 , 35 and 9).

Respondents Husband and Wife then brought this action on October 8, 2002 to obtain title to the real property without paying the

$20,000 (App. 5 and 34 and 35 and 9).

At trial no evidence was offered that Petitioner Defendant Wife Ms. Souphankhaysy ever made any oral statement or oral contract to transfer title to the property (App. 26, 28, 35, 37, 7, 8 and 15).

At trial Respondent Plaintiff Husband Mr. Menevilay did **NOT** testify that Petitioner Defendant Wife Ms.Souphankhaysy made any oral statements or oral agreement for the sale of the real property (App. 35, 7, 8 and 15).

At trial Respondent Plaintiff Wife Ms. Menevilay did **NOT** testify that Petitioner Defendant Wife Ms. Souphankhaysy made any oral statements or oral agreement for the sale of the real property (App. 37, 7, 8 and 15).

At trial Petitioner Defendant Wife Ms. Souphankhaysy testified that she never made any oral statement or oral contract to transfer title to the real property (App. 26, 28, 7, 8 and 15). Likewise, at trial Petitioner Defendant Wife Ms. Souphankhaysy testified that she never heard her husband make any oral statement or oral contract to transfer title to the property (App. 26, 28, 7, 8 and 15).

At trial no written evidence of any type was offered by Respondents Plaintiffs supporting their contention that there was an oral contract for the sale of the real property (App. 14, 15 and 45). The only trial exhibits offered at trial by Respondents Plaintiffs were three photographs which were offered and admitted into evidence for the sole purpose of showing that Respondents and Petitioners were friendly after Mr. Menevilay moved into the house (App. 45).

At trial Respondents Plaintiffs Husband and Wife chose not to introduce any receipts as evidence as to the value of the alleged improvements made to the real property, but relied exclusively on vague and nonspecific testimony (App. 14, 15 and 45).

At trial, Respondents Plaintiffs never testified as to what the price in the alleged oral contract was, and Respondents Plaintiffs admitted that Petitioners Defendants wanted $20,000 cash which Respondents Plaintiffs refused to pay and then that Respondents Plaintiffs proceeded with this lawsuit (App. 5 and 34 and 35 and 9).

At trial, Respondent Plaintiff Husband's testimony was:

Respondent Plaintiff Husband's 12-14-04 Trial Testimony:

[Question] In that July 1993 conversation, did y'all talk about how much the house was going to cost?

[Answer] We don't talking about the price of the house, but we talking about $2,000 down[2].

[Question] So in July 1993, all you discussed concerning price was the $2,000 down payment; is that correct?

[Answer] Yes[3]. (Emphasis added) (App. 35).

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[2]At trial Respondent Plaintiff Husband was the only one that testified that $2,000 was given to Petitioner Defendant Husband by Respondent Plaintiff Husband (App. 26, 28, 31, 35, 37 and 38). Even Respondent Plaintiff Wife testified that she never saw the $2,000 (App. 38).

[3]Further, Respondents Plaintiffs' testimony about the purchase of the real property that is the subject of this suit being discussed in California in July of 1993 is not plausible. In fact it is impossible because Petitioners Defendants did not purchase the house at 610 Neomi until April 25, 1994, and the house had only been up for sale for a few weeks. Accordingly, the amount of the down payment would not have been known eight months before, nor did Petitioners Defendants own the 610 Neomi house eight months before (App. 29-31, 33, 35, 37, and 28).

At trial Defendant Petitioners Defendants testified that there was no oral agreement for the sale of the real property, only an oral lease (App. 26, 28, 30, 31, 33 and 34).

REASONS FOR ALLOWANCE OF THE WRIT

I. Review Is Warranted Because the Texas District Court and the Texas Appeals Court and the Texas Supreme Court Deprived Petitioner Defendant Wife Ms. Souphankhaysy of Her Right to Substantive And/or Procedural Due Process and Equal Protection of the Laws By Enforcing An Alleged Oral Agreement For The Sale Of Real Estate Against Her When There Was No Evidence Whatsoever That Ms. Souphankhaysy Made Any Oral Statements Or Oral Agreement For The Sale Of The Real Estate

First of all it is important to stress that the April 25 1994 warranty deed that conveyed title to the real property that is the subject of this suit conveyed that title to both Petitioners Defendant Wife Ms. Souphankhaysy and her husband Defendant Husband Mr. Ratsavong as jointly held community property. (App. 39-43).

The Texas court system failed to address the fact that there was **no evidence that Petitioner Defendant Wife Ms. Souphankhaysy made any oral statements or oral agreement for the sale of the real estate.** Thus the Texas court system committed error by enforcing an alleged oral agreement against Ms. Souphankhaysy because there was no evidence that she made any oral statements or oral agreement for the sale of her real estate (App. 26, 28, 35, 37, 7, 8 and 15). Thus the Texas court system deprived Petitioner Defendant Wife Ms. Souphankhaysy of her right to Substantive and/or Procedural Due Process and Equal Protection of the laws by enforcing an alleged oral agreement for the sale of real estate against Petitioner Defendant Wife Ms. Souphankhaysy when there was no evidence whatsoever that she made any oral statements or oral agreement for the sale of the real estate (App. 26, 28, 35, 37,

7, 8 and 15).

Respondent Plaintiff Husband Mr. Menevilay did **not** testify that Petitioner Defendant Wife Ms. Souphankhaysy made any oral statements or oral agreement for the sale of real estate (App. 35, 7, 8 and 15). In particular Respondent Plaintiff Husband Mr. Menevilay's trial testimony was only that Defendant Husband Ratsavong had an oral conversation about conveying the real property (App. 35, 7, 8 and 15).

Respondent Plaintiff Wife Ms. Menevilay did **not** testify that Petitioner Defendant Wife Ms.Souphankhaysy made any oral statements or oral agreement for the sale of real estate (App. 37, 7, 8 and 15).

Petitioner Defendant Wife Ms.Souphankhaysy testified that she made no oral statements or oral agreement for the sale of real estate (App. 26, 28, 7, 8 and 15). Petitioner Defendant Wife Ms. Souphankhaysy testified that she never heard her husband make any oral statements or oral agreement for the sale of the real estate (App. 26, 28, 7, 8 and 15).

Accordingly, based upon the Texas Constitution (and as further argued *infra* based upon the United States Constitution) there is no evidence whatsoever to support Ms. Souphankhaysy being stripped of her ownership in the real property. *Dalton v. Don J. Jackson, Inc.*, 691 S.W.2d 765, 767-68 (Tex. App.--Austin 1985, *no writ)* **(one spouse may not unilaterally convey his or her interest in joint community property so as to effectuate a partition that is not authorized by the Texas Constitution).** *See Vallone v. Miller,* 663 S.W.2d 97, 98 (Tex. App.--Houston [14th Dist.] 1983, *writ ref'd n. r. e.). See* Tex. Fam. Code § 3.102 (2004) **(one spouse cannot alone convey or encumber joint management community property unless the spouses have otherwise agreed).**

> "Community property may only be partitioned upon compliance with the provisions of Tex. Const. Ann.

art. XVI, § 15 (Supp. 1985) and §§ 5.42 and 5.44 of the Family Code. [§§ 5.42 and 5.44 of the Texas Family Code have been recodified and are now sections 4.002 and 4.004.] Accordingly, one spouse may not convey his or her interest in joint community property to a third party, so as to effectuate a partition by creating a tenancy in-common between the remaining spouse and the third party". *Dalton v. Don J. Jackson, Inc.*, 691 S.W.2d 765, 767-68 (Tex. App.—Austin 1985, no writ).

In particular, no evidence was offered that Petitioner Defendant Wife Ms. Souphankhaysy ever made any oral statement or oral contract to transfer title to the property (App. 26, 28, 35, 37, 7, 8 and 15). To the contrary Ms. Souphankhaysy testified that she never made any oral statement or oral contract to transfer title to the property (App. 26, 28, 7, 8 and 15). Likewise, Ms. Souphankhaysy testified that she never heard her husband make any oral statement or oral contract to transfer title to the property (App. 26, 28, 7, 8 and 15). For the Texas court system to take title to the real property away from Ms. Souphankhaysy and give it to the Respondents Plaintiffs Menevilays without any legitimate factual or legitimate legal reasoning is a blatant violation of Ms. Souphankhaysy's right to not have her real property taken through the action of the government, namely the trial court and the appeals court and the Texas Supreme Court.

Accordingly, the trial court and the appeals court and the Texas Supreme Court committed error by enforcing an alleged oral agreement against Ms. Souphankhaysy because there was no evidence that she made any oral statements or oral agreement for the sale of her real estate (App. 26, 28, 35, 37, 7, 8 and 15).

The trial court and the appeals court and the Texas Supreme Court enforcing an alleged oral agreement for the sale of real estate against Ms. Souphankhaysy deprived her of her Constitutional rights to not be deprived of her property without due process of law as

afforded to her by the Texas and United States Constitutions. The trial court and the appeals court and the Texas Supreme Court deprived Ms. Souphankhaysy of her Texas and United States Constitutional rights to due process and her right to not be deprived of her property without due process of law and her rights to due course of law and her right to equal protection of the law.

Ms. Souphankhaysy was not afforded due course of law as guaranteed by the Texas Constitution TX. CONST. Article 1 Sec. 19 and she was not afforded due process of law as afforded by the U.S. Constitution, U.S. CONST., amend., V. and U.S. CONST., amend XIV. The Texas court system's rulings are also contrary to and violate the Equal Protection Clause and the Due Process Clause of the United States Constitution by denying Ms. Souphankhaysy her rights to equal protection of laws as afforded her by the Fourteenth Amendment of the U.S. Constitution and by depriving her of her right to due process of the law as afforded her by the 5th and the 14th Amendments of the U.S. Constitution[4].

The Texas state court system's failure to consider the facts and law underlying Ms. Souphankhaysy's defenses and title to her property and the trial court's failure to give Ms.Souphankhaysy her meaningful day in court denied her of her right to equal protection of the law and denied her of her right to due process of law. This deprivation includes, but is not limited to Ms. Souphankhaysy's right to have decisions based on admissible evidence, her right to notice, her right to a full and fair hearing, and her right to a meaningful day

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[4]Tex. CONST., Article 1 Section 3; U.S. CONST., amend XIV; U.S. CONST., amend. V. *See Adherent Constructors, Inc. v. Slater*, 145 L. Ed. 2d 650 (2000); *City of Chicago v. Morales*, 144 L. Ed. 2d 67 (2000); *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 144 L. Ed. 2d 575 (1999); *Hunt v. Cromartie*, 143 L. Ed. 2d 731 (1999); *Moore v. City of East Cleveland Ohio*, 431 U.S. 494 (1977); *Troxel v. Granville*, 147 L. Ed. 2d 49 (2000).

in court to be heard, and her right to not be deprived of her property without due process of law. U.S. CONST., amend. V.; U.S. CONST., amend XIV. *Granniss v. Ordean*, 234 U.S. 385, 394 (1914)[5].

Accordingly, Ms. Souphankhaysy was not afforded equal protection of the laws as guaranteed by the Fourteenth Amendment of the United States Constitution, and Ms. Souphankhaysy was not afforded due process of law as guaranteed by the Fifth and Fourteenth Amendments of United States Constitution[6].

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[5]No evidence was offered that Ms. Souphankhaysy ever made any oral statement or oral contract to transfer title to the property (App. 26, 28, 35, 37, 7, 8 and 15). To the contrary Ms. Souphankhaysy testified that she never made any oral statement or oral contract to transfer title to the property (App. 26, 28, 7, 8 and 15). Further, no evidence was offered that her husband ever made any oral statement or oral contract to transfer title to the property, except that he offered to sell the house for $20,000, thereby giving Respondents credit for most of the rental payments made. (App. 26, 28, 30,31, 33, 34, 35, and 45). Likewise, Ms. Souphankhaysy testified that she never heard her husband make any oral statement or oral contract to transfer title to the property. (App. 26, 28, 7, 8 and 15). For the trial court and the appeals court and the Texas Supreme Court to take title to the real property away from Ms. Souphankhaysy and give it to the Menevilays without any legitimate factual or legitimate legal reasoning is a blatant violation of Ms. Souphankhaysy's right to not have her real property taken through the action of the government, namely the trial court and the appeals court and the Texas Supreme Court.

[6]U.S. CONST., amend., V. and U.S. CONST., amend XIV. *See Adherent Constructors, Inc. v. Slater*, 145 L. Ed. 2d 650 (2000); *City of Chicago v. Morales*, 144 L. Ed. 2d 67 (2000); *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 144 L. Ed. 2d 575 (1999); *Hunt*

Further Ms. Souphankhaysy was not afforded due course of law as afforded by the Texas Constitution TX. CONST. Article 1 Sec. 19 and she was not afforded due process of law as afforded by the U.S. Constitution, U.S. CONST., amend., V. and U.S. CONST., amend XIV. The Texas court system's rulings are also contrary to and violate the Equal Protection Clause and the Due Process Clause of the United States Constitution by denying Ms. Souphankhaysy her rights to equal protection of laws as afforded her by the Fourteenth Amendment of the U.S. Constitution and by depriving her of her right to due process of the law as afforded her by the 5th and the 14th Amendments of the U.S. Constitution[7].

II. Review Is Warranted Because the Texas District Court and the Texas Appeals Court and the Texas Supreme Court By Enforcing An Alleged Indefinite Oral Agreement For The Sale Of Real Estate, Deprived Petitioners Of Their Constitutional Rights To Not Be Deprived Of Their Real Property Without Due Process Of Law As Afforded To Them By The Texas And United States Constitutions.

The trial court and the appeals court and the Texas Supreme Court 's rulings are contrary to and violate the Equal Protection Clause and the Due Process Clause of the United States Constitution

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v. Cromartie, 143 L. Ed. 2d 731 (1999); *Moore v. City of East Cleveland Ohio*, 431 U.S. 494 (1977); *Troxel v. Granville*, 147 L. Ed. 2d 49 (2000).

[7]Tex. CONST., Article 1 Section 3; U.S. CONST., amend XIV; U.S. CONST., amend. V. *See Adherent Constructors, Inc. v. Slater*, 145 L. Ed. 2d 650 (2000); *City of Chicago v. Morales*, 144 L. Ed. 2d 67 (2000); *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 144 L. Ed. 2d 575 (1999); *Hunt v. Cromartie*, 143 L. Ed. 2d 731 (1999); *Moore v. City of East Cleveland Ohio*, 431 U.S. 494 (1977); *Troxel v. Granville*, 147 L. Ed. 2d 49 (2000).

by denying Petitioners their rights to equal protection of laws as afforded Petitioners by the Fourteenth Amendment of the U.S. Constitution and by depriving Petitioners of their right to due process of the law as afforded them by the Fifth and the Fourteenth Amendments of the U.S. Constitution. U.S. CONST., amend XIV; U.S. CONST., amend. V. *See Adarand Constructors, Inc. v. Slater*, 145 L. Ed. 2d 650 (2000); *City of Chicago v. Morales*, 144 L. Ed. 2d 67 (2000); *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 144 L. Ed. 2d 575 (1999); *Hunt v. Cromartie*, 143 L. Ed. 2d 731 (1999); *Moore v. City of East Cleveland Ohio*, 431 U.S. 494 (1977); *Troxel v. Granville*, 147 L. Ed. 2d 49 (2000).

Further Petitioners were not afforded due course of law as guaranteed by the Texas Constitution TX. CONST. Article 1 Sec. 19 and Petitioners were not afforded due process of law as afforded by the U.S. Constitution, U.S. CONST., amend., V. and U.S. CONST., amend XIV. The Texas court system's rulings are also contrary to and violate the Equal Protection Clause and the Due Process Clause of the United States Constitution by denying Petitioners their rights to equal protection of laws as afforded them by the Fourteenth Amendment of the U.S. Constitution and by depriving them of their right to due process of the law as afforded to Petitioners by the 5th and the 14th Amendments of the U.S. Constitution[8].

Additionally, the Texas Supreme Court has ruled differently from: (1) five prior Texas Supreme Court cases; and, (2) five prior United States Supreme Court cases, on questions of law material to

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[8]Tex. CONST., Article 1 Section 3; U.S. CONST., amend XIV; U.S. CONST., amend. V. *See Adherent Constructors, Inc. v. Slater*, 145 L. Ed. 2d 650 (2000); *City of Chicago v. Morales*, 144 L. Ed. 2d 67 (2000); *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 144 L. Ed. 2d 575 (1999); *Hunt v. Cromartie*, 143 L. Ed. 2d 731 (1999); *Moore v. City of East Cleveland Ohio*, 431 U.S. 494 (1977); *Troxel v. Granville*, 147 L. Ed. 2d 49 (2000).

the decision of this case, regarding the denial of equal protection of the laws and the deprivation of due process **concerning the issue of whether or not an indefinite oral contract for the sale of real estate can be enforced** by the Texas court system.

The five United States Supreme Court cases are: *Williams v. Morris* 95 U.S. 444 (1877)**(oral agreement concerning real property that was not clear and definite was not enforced);** *Purcell v. Miner* 71 U.S. 513(1867)**(oral agreement concerning real property that was not clear and definite was not enforced);** *See Whitney v. Hay* 181 U.S. 77 (1901) (where there was written evidence of a **clear and definite oral agreement** the exception to the Statute of Frauds was met regarding real property); *Riggles v. Ervey* 154 U.S. 244 (1894)(where there was written evidence of a **clear and definite oral agreement** the exception to the Statute of Frauds was met regarding real property); and, *Neal v. Neales* 76 U.S. 1 (1869)(where there was written evidence of a **clear and definite oral agreement** the exception to the Statute of Frauds was met regarding real property).

The five Texas Supreme Court cases discussed *infra* are: *Francis v. Thomas,* 106 S.W.2d 257, 258 (Tex.1937); *Boyert v. Tauber*, 834 S.W.2d 60 (Tex. 1992); *Cowen v. Bell, 300* S.W.2d 286 (Tex. 1957); *Hooks v. Bridgewater,* 229 S.W. 1114 (Tex. 1921); and, *Nagle v. Nagle,* 633 S.W.2d 796 (Tex. 1982).

The denial of equal protection of the laws and the deprivation of due process is twofold in this case. First, the lawsuit out of which this dispute arose was tried in Dallas County District Court in Dallas, Texas and was tried and decided pursuant to Texas law. Accordingly, the denial of equal protection of the laws and the deprivation of due process occurred in the Texas court system.

Second, the Texas state court system (including the Texas Supreme Court, the Eighth Court of Appeals at El Paso and the 68th Dallas County District Court) denied Petitioners equal protection of the laws and deprived Petitioners of due process in violation of the

Fourteenth and Fifth amendments of the United States Constitution by enforcing an alleged indefinite oral agreement for the sale of real estate **that was not clear and definite** in further violation of United States Supreme Court precedent. *Williams v. Morris*, 95 U.S. 444 (1877)**(oral agreement concerning real property that was not clear and definite was not enforced)**; *Purcell v. Miner*, 71 U.S. 513(1867)**(oral agreement concerning real property that was not clear and definite was not enforced)**. *See Whitney v. Hay* 181 U.S. 77 (1901)(where there was written evidence of a **clear and definite oral agreement** the exception to the Statute of Frauds was met regarding real property); *Riggles v. Ervey* 154 U.S. 244 (1894)(where there was written evidence of a **clear and definite oral agreement** the exception to the Statute of Frauds was met regarding real property); *Neal v. Neales* 76 U.S. 1 (1869)(where there was written evidence of a **clear and definite oral agreement** the exception to the Statute of Frauds was met regarding real property).

Effectively, the Texas state court system has ignored hundreds of years of Texas Supreme Court precedent and the Texas state court system has ignored hundreds of years of United States Supreme Court precedent and Texas state court system has ignored the United States Constitution and the Texas Constitution and effectively said that even if the existence of an oral contract is disputed and the alleged terms are not clear and definite one can be stripped of their real property by a Texas court based solely upon uncorroborated oral testimony from one party.

The issue presented by this case is of paramount importance to the United States legal system, as our entire country is made up of real property. If a court can take someone's real property based solely upon unsubstantiated hearsay without any definite evidence then our real property system would be thrown into total disarray.

The Texas state court system's failure to consider the facts and law underlying Petitioners defenses against Respondents denied Petitioners their right to equal protection of the law and denied

Petitioners their right to due process of law. This deprivation includes, but is not limited to Petitioners right to cross examine witnesses, Petitioners right to have decisions based on admissible evidence, Petitioners right to notice, Petitioners right to a full and fair hearing, and Petitioners right to a day in court to be heard. U.S. CONST., amend. V.; U.S. CONST., amend XIV. *See Granniss v. Ordean*, 234 U.S. 385, 394 (1914).

Accordingly, Petitioners were not afforded equal protection of the laws as guaranteed by the Fourteenth Amendment of the United States Constitution, and Petitioners were not afforded due process of law as guaranteed by the Fifth and Fourteenth Amendments of United States Constitution, U.S. CONST., amend., V. and U.S. CONST., amend XIV. *See Adarand Constructors, Inc. v Slater*, 145 L. Ed. 2d 650 (2000); *City of Chicago v. Morales*, 144 L. Ed. 2d 67 (2000); *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 144 L. Ed. 2d 575 (1999); *Hunt v. Cromartie*, 143 L. Ed. 2d 731 (1999); *Moore v. City of East Cleveland Ohio*, 431 U.S. 494 (1977); *Troxel v. Granville*, 147 L. Ed. 2d 49 (2000).

III. Review Is Warranted Because The Texas District Court and the Texas Appeals Court and the Texas Supreme Court Conflict with Five Decisions of this United States Supreme Court And Conflict with Five Decisions of the Texas Supreme Court

A. Conflict with Five Decisions of this United States Supreme Court

This United States Supreme Court has held that for an oral agreement to be enforced for a conveyance of real estate as an exception to the Statute of Frauds that the oral agreement must be **clear and definite** (emphasis added). *Williams v. Morris* 95 U.S. 444 (1877)**(oral agreement concerning real property that was not clear and definite was not enforced)**; *Purcell v. Miner* 71 U.S. 513(1867) **(oral agreement concerning real property that was not clear and definite was not enforced)**. *See Whitney v. Hay* 181 U.S.

77 (1901)(where there was written evidence of a **clear and definite** oral agreement the exception to the Statute of Frauds was met regarding real property); *Riggles v. Ervey* 154 U.S. 244 (1894) (where there was written evidence of a **clear and definite** oral agreement the exception to the Statute of Frauds was met regarding real property); *Neal v. Neales* 76 U.S. 1 (1869) (where there was written evidence of a **clear and definite** oral agreement the exception to the Statute of Frauds was met regarding real property).

B. Conflict with Five Decisions of the Texas Supreme Court

1. The Texas Court System Ignored Five Decisions of the Texas Supreme Court

Petitioners cited, briefed and argued five different Texas Supreme Court cases to the Texas state court system (including the Texas Supreme Court, the Eighth Court of Appeals at El Paso and the 68th Dallas County District Court) which all held that for an oral agreement to even get to a point where a court was to consider whether or not the exception to the Statute of Frauds was met, **there had to be a definite undisputed oral agreement between the parties**. In the Eighth Court of Appeals' opinion the Eighth Court of Appeals failed to even mention four of those Texas Supreme Court cases and in the fifth case the Eighth Court of Appeals misstated the holding (App. 13-14). The Texas Supreme Court failed to even mention any of the five Texas Supreme Court cases[9].

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[9] *See Williams v. Morris* 95 U.S. 444 (1877)(**oral agreement concerning real property that was not clear and definite was not enforced**); *Purcell v. Miner* 71 U.S. 513(1867)(**oral agreement concerning real property that was not clear and definite was not enforced**); *Whitney v. Hay* 181 U.S. 77 (1901)(where there was written evidence of a **clear and definite oral agreement** the exception to the Statute of Frauds was met regarding real property); *Riggles v. Ervey* 154 U.S. 244 (1894)(where there was written evidence of a **clear and definite oral agreement** the exception to the Statute of Frauds

Contrary to the Eighth Court of Appeals' opinion, in *Hooks v. Bridgewater,* 229 S.W. 1114 (Tex. 1921) the Texas Supreme Court rejected the exception to the Statute of Frauds. *Hooks v. Bridgewater,* 229 S.W. 1114 (Tex. 1921).

The Eighth Court of Appeals failed to mention *Francis v. Thomas,* 106 S.W.2d 257, 258 (Tex. 1937) where the Texas Supreme Court rejected the exception to the Statute of Frauds specifically holding that **where there is confusion as to the terms of the alleged oral contract, the alleged oral contract cannot be enforced because of confusion and indefiniteness as to the terms of the alleged oral contract agreement.** *Francis v. Thomas,* 106 S.W.2d 257, 258 (Tex. 1937) is on point with this case and should control.

The Eighth Court of Appeals also fails to mention *Boyert v. Tauber*, 834 S.W.2d 60 (Tex. 1992) where the Texas Supreme Court rejected the exception to the Statute of Frauds where a real estate broker testified what the terms of the alleged oral agreement were for the payment of a broker's commission and the principal testified to the contrary that there was only an agreement for a finder's fee with a third-party. *Boyert v. Tauber*, 834 S.W.2d 60 (Tex. 1992) is on point with this case and should control.

The Eighth Court of Appeals' opinion also fails to even mention *Cowen v. Bell, 300* S.W.2d 286 (Tex. 1957) where the Texas Supreme Court rejected the exception to the Statute of Frauds where the terms of the alleged oral contract to repurchase mineral interest rights were not undisputed, even though there was an affidavit for the appellant that was actually taken as true for summary judgment purposes. *Cowen v. Bell, 300* S.W.2d 286 (Tex. 1957) is on point with this case and should control.

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was met regarding real property); *Neal v. Neales* 76 U.S. 1 (1869)(where there was written evidence of a **clear and definite oral agreement** the exception to the Statute of Frauds was met regarding real property).

The Eighth Court of Appeals also fails to even mention *Nagle v. Nagle,* 633 S.W.2d 796 (Tex. 1982) where the Texas Supreme Court rejected the exception to the Statute of Frauds even though the terms of the alleged oral agreement of a former husband to convey property in return for the former wife dismissing a contempt action were undisputed.

The Eighth Court of Appeals' opinion does however clearly cite in the facts that **there was confusion between the parties as to what the terms of the alleged oral contract were**. *Ratsavong v. Menevilay*, 2005 Tex. App. LEXIS 8866, page 5 (Tex. App. El Paso Oct. 27, 2005) *reh'g denied* 2005 Tex. App. LEXIS 10358. The Eighth Court of Appeals' October 27, 2005 opinion at page 5 (App. 8) clearly states that Mr. Ratsavong testified that there was no oral agreement to sell the house, only an oral agreement to rent the house and Ms. Souphankhaysy testified that she never made any oral agreement with anyone nor did Ms. Souphankhaysy hear Mr. Ratsavong ever make any oral agreement with anyone (App. 8). *See also* App. 26, 28, 7 and 15. Also, the Menevilays never testified that Ms. Souphankhaysy made any oral agreement with anyone (App. 35, 37, 7, 8 and 15).

Applicable Texas Supreme Court law warrants reversal as applicable law holds that **where there is confusion as to the terms of the alleged oral contract, the alleged oral contract cannot be enforced because of confusion and indefiniteness as to the terms of the alleged oral contract agreement.** *Francis v. Thomas,* 106 S.W.2d 257, 258 (Tex.1937); *Boyert v. Tauber*, 834 S.W.2d 60 (Tex.1992); *Cowen v. Bell, 300* S.W.2d 286 (Tex. 1957); *see also Hooks v. Bridgewater,* 229 S.W. 1114 (Tex. 1921); *Nagle v. Nagle,* 633 S.W.2d 796 (Tex. 1982).

Applicable United States Supreme Court law warrants reversal as applicable law holds that the oral agreement must be **clear and definite** to invoke the exception to the Statute of Frauds for a conveyance of real estate. For an oral agreement to be enforced for a conveyance of real estate the oral agreement must be **"clear and definite"**. *Williams v. Morris* 95 U.S. 444 (1877)**(oral**

agreement concerning real property that was not clear and definite was not enforced); *Purcell v. Miner* 71 U.S. 513 (1867) **(oral agreement concerning real property that was not clear and definite was not enforced)**; *See Whitney v. Hay* 181 U.S. 77 (1901)(where there was written evidence of a **clear and definite** oral agreement the exception to the Statute of Frauds was met regarding real property); *Riggles v. Ervey* 154 U.S. 244 (1894) (where there was written evidence of a **clear and definite** oral agreement the exception to the Statute of Frauds was met regarding real property); *Neal v. Neales* 76 U.S. 1 (1869) (where there was written evidence of a **clear and definite** oral agreement the exception to the Statute of Frauds was met regarding real property).

2. Additional Due Process and Equal Protection Violations

Pursuant to Texas Rule of Appellate Procedure 47.1 and applicable Texas Supreme Court case law, *Texas Disposal Systems v. Perez*, 80 S.W.3d 593 (Tex. 2002), the Eighth Court of Appeals was obligated to render a written opinion that **"addresses every issue raised and necessary to final disposition of the appeal"** (emphasis added). The Texas Supreme Court did not address this issue. Accordingly, the decisions below should be reversed based on applicable Texas Supreme Court case law and because this failure constitutes a denial of Petitioners of their right to equal protection of the law and a denial of Petitioners of their right to due process of law. This deprivation includes, but is not limited to Petitioners right to a full and fair hearing, and Petitioners' right to a day in court to be heard. U.S. CONST., amend. V.; U.S. CONST., amend XIV. *See Granniss v. Ordean*, 234 U.S. 385, 394 (1914).

Accordingly, Petitioners were not afforded equal protection of the laws as guaranteed by the Fourteenth Amendment of the United States Constitution, and Petitioners were not afforded due process of law as guaranteed by the Fifth and Fourteenth Amendments of United States Constitution, U.S. CONST., amend., V. and U.S. CONST., amend XIV. *See Adarand Constructors, Inc. v. Slater*, 145 L. Ed. 2d 650 (2000); *City of Chicago v. Morales*, 144 L.

Ed. 2d 67 (2000); *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 144 L. Ed. 2d 575 (1999); *Hunt v. Cromartie*, 143 L. Ed. 2d 731 (1999); *Moore v. City of East Cleveland Ohio*, 431 U.S. 494 (1977); *Troxel v. Granville*, 147 L. Ed. 2d 49 (2000).

The foregoing Texas Supreme Court case law is consistent with United States Supreme Court precedent. For an oral agreement to be enforced for a conveyance of real estate the oral agreement must be **"clear and definite"**. *Williams v. Morris* 95 U.S. 444 (1877)**(oral agreement concerning real property that was not clear and definite was not enforced)**; *Purcell v. Miner* 71 U.S. 513 (1867)**(oral agreement concerning real property that was not clear and definite was not enforced)**. *See Whitney v. Hay* 181 U.S. 77 (1901)(where there was written evidence of a **clear and definite** oral agreement the exception to the Statute of Frauds was met regarding real property); *Riggles v. Ervey* 154 U.S. 244 (1894) (where there was written evidence of a **clear and definite** oral agreement the exception to the Statute of Frauds was met regarding real property); *Neal v. Neales* 76 U.S. 1 (1869) (where there was written evidence of a **clear and definite** oral agreement the exception to the Statute of Frauds was met regarding real property) .

Because there was no clear and definite oral agreement pursuant to United States Supreme Court precedent, Texas Supreme Court precedent, the United States Constitution and the Texas Constitution the Texas court system violated Petitioners Constitutional rights to not be deprived of their property without due process of law and the equal protection of the law.

3. The Statute Of Frauds Should Have Prohibited The Enforcement Of An Alleged Oral Agreement For The Sale Of Real Estate As The Exception To The Statute Of Frauds Was Not Met

In the Eighth Court of Appeals' opinion the Eighth Court of Appeals committed error because the Statute of Frauds should have prohibited the enforcement of an alleged oral agreement for the sale

of real estate as the exception to the Statute of Frauds was not met. The Eighth Court of Appeals did not understand Petitioners allegations in this issue, as this issue was not a sufficiency of evidence issue.

This case is about the Statute of Frauds. Tex. Bus. & Comm. Code §26.01 (2004). For the sale of real estate to be enforceable there must be a written contract. That is the law. The Respondents Plaintiffs Menevilays admitted in pretrial discovery and in testimony at trial that there was no written contract. Thus the Menevilays must meet their burden of proof and show by competent evidence that they fit into a narrow exception.

The first requirement to even get to the very narrow exception allowed by the Statute of Frauds is that there must be a clear and definite oral agreement. **The Statute of Frauds prohibits the enforcement of an alleged indefinite oral agreement** for the sale of real estate *Francis v. Thomas,* 106 S.W.2d 257, 258 (Tex.1937); *Boyert v. Tauber*, 834 S.W.2d 60 (Tex. 1992); *Cowen v. Bell, 300* S.W.2d 286 (Tex. 1957); *see also Hooks v. Bridgewater,* 229 S.W. 1114 (Tex. 1921); *Nagle v. Nagle,* 633 S.W.2d 796 (Tex. 1982). *See Williams v. Morris* 95 U.S. 444 (1877) **(oral agreement concerning real property that was not clear and definite was not enforced)**; *Purcell v. Miner* 71 U.S. 513 (1867)**(oral agreement concerning real property that was not clear and definite was not enforced)**; *Whitney v. Hay* 181 U.S. 77 (1901)(where there was written evidence of a **clear and definite** oral agreement the exception to the Statute of Frauds was met regarding real property); *Riggles v. Ervey* 154 U.S. 244 (1894)(where there was written evidence of a **clear and definite** oral agreement the exception to the Statute of Frauds was met regarding real property); *Neal v. Neales* 76 U.S. 1 (1869) (where there was written evidence of a **clear and definite** oral agreement the exception to the Statute of Frauds was met regarding real property).

The narrow exception is that an oral contract for the purchase of real property is enforceable if the purchaser: (1) pays the consideration; (2) takes possession of the property; and, (3) makes

permanent and valuable improvements on the property with the consent of the seller, or without such improvements, other facts are shown that would make the transaction a fraud on the purchaser if the oral contract was not enforced. *See Nagle v. Nagle, 633* S.W.2d 796, 798 (Tex. 1982).

It is noteworthy that there was no physical evidence presented at trial that valuable improvements had been made to the property with the consent of the Petitioners. The only trial exhibits offered at trial by Respondents Plaintiffs were three photographs which were offered and admitted into evidence for the sole purpose of showing that Respondents and Petitioners were friendly after Mr. Menevilay moved into the house (App. 45).

At trial Respondents Plaintiffs Husband and Wife chose not to introduce any receipts as evidence as to the value of the alleged improvements made to the real property, but relied exclusively on vague and nonspecific testimony (App. 14, 15 and 45).

The Eighth Court of Appeal failed to address the fact that the Statute of Frauds prohibits the enforcement of an alleged indefinite oral agreement for the sale of real estate. Accordingly, Petitioners were not afforded equal protection of the laws as guaranteed by the Fourteenth Amendment of the United States Constitution, and Petitioners were not afforded due process of law as guaranteed by the Fifth and Fourteenth Amendments of United States Constitution, U.S. CONST., amend., V. and U.S. CONST., amend XIV. *See Adarand Constructors, Inc. v. Slater*, 145 L. Ed. 2d 650 (2000); *City of Chicago v. Morales*, 144 L. Ed. 2d 67 (2000); *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 144 L. Ed. 2d 575 (1999); *Hunt v. Cromartie*, 143 L. Ed. 2d 731 (1999); *Moore v. City of East Cleveland Ohio*, 431 U.S. 494 (1977); *Troxel v. Granville*, 147 L. Ed. 2d 49 (2000).

CONCLUSIONS

The first issue presented by this case is of paramount importance to the United States legal and social system because the

majority of the people in our country are married husbands and wives. If real property that is owned jointly by a husband and wife is allowed to be conveyed by a simple oral statement from only one spouse then this would not only potentially cause unimaginable potential social problems between married husbands and wives but our real property system would be thrown into total disarray.

The second issue presented by this case is of paramount importance to the United States legal system because our entire country is made up of real property. If a court can take someone's real property based solely upon uncorroborated oral testimony from one party without any definite evidence then our real property system would be thrown into total disarray.

Additionally this case deserves to be heard because otherwise multiple Constitutional violations of deprivation of the equal protection of the laws and deprivation of the due process guaranteed to the citizens of the United States by the Fifth and Fourteenth Amendments of United States Constitution will have occurred and will not have been remedied. The Texas court system taking of Petitioners real property without due process of law needs to be heard and addressed so it will not happen in the future to other United States citizens.

Respectfully Submitted By:
Timothy T. Mitchell
Rashti and Mitchell
Attorneys at Law
Texas State Bar No. 14223000
Admitted to the U.S. Supreme
Court 05-23-94
4422 Ridgeside Drive
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APPENDIX

Excerpts from Trial
on Dec. 15, 2004
in the 68th District Court
Dallas County, Texas

Trial Excerpts from Court's Bench Ruling on December 15, 2004

Page 54 lines 19 through 25 and Page 65 lines 1 through 2

THE COURT: Okay Admittedly this case has been difficult to follow. However, I only have the credibility of the parties. And I find the plaintiff to be more credible. And I'm going to find a sale of property. But the defendants are going to be entitled to recover back reimbursement for the monies paid for taxes and insurance that they paid since being there, plus cost of the–the plaintiffs will recover their cost of court. Send me a judgment to that effect.

CAUSE NO. DV-0209543-C

VON RATSAVONG AND FONG SOUPHANKHAYSY, Plaintiffs,	§	IN THE DISTRICT COURT
v.	§	68th JUDICIAL DISTRICT
BOUNPONE MENEVILAY AND SYPANOME MENEVILAY, Defendants.	§	DALLAS COUNTY TEXAS

JUDGMENT

On the 14th and 15th day of December, 2004 came on to be heard the above entitled and numbered cause. Bounpone Menevilay and Sypanome Menevilay, Plaintiffs herein appeared in person and by attorney of record and announced ready for trial.

Von Ratsavong and Fong Souphankhaysy, Defendants, appeared in person and by attorney of record and announced ready for trial.

No jury having been demanded all matters of fact and things in controversy were submitted to the court.

The court after hearing the evidence and arguments of counsel is of the opinion that:

Bounpone Menevilay and Sypanome Menevilay are entitled to recover of and from Von Ratsavong and Fong Souphankhaysy the title to those premises located at 610 Neomi Street, Dallas, Dallas County, Texas 75217 and being described as:

> Lot 14 , Block N/6256 of Home Gardens Addition, Unit No. 3, an addition to the City of Dallas, Texas

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, th.

Bounpone Menevilay and Sypanome Menevilay are awarded the title in and to said property.

Von Ratsavong and Fong Souphankhaysy recover of and from Bounpone Menevilay and Sypanome Menevilay those expenses incurred by them in paying certain ad valorem property taxes and property insurance on the property in question, amounting to $3,364.78.

This amount shall be paid before 45 days from this date and a Superior Lien against said property shall exist for security of the payment of said amount of $3,364.78, and Von Ratsavong and Fong Souphankhaysy may foreclose said lien under applicable Texas Law.

All costs of count expended or incurred in this cause are hereby adjudged against Von Ratsavong and Fong Souphankhaysy.

All writs and processes for the enforcement and collection of this judgment or the cost of court may issue as necessary.

All other relief not expressly granted herein is denied.

Signed this 22 day of December, 2004.

s/Charles Stokes
Judge Presiding

approved as to form:

s/N. Alex Bickley
N. Alex Bickley, Attorney for Plaintiffs

s/Timothy T. Mitchell
Timothy T. Mitchell, Attorney for Defendants

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

VON RATSAVONG AND	§	
FONG SOUPHANKHAYSY,	§	No. 08-05-00044-CV
Appellants,	§	Appeal from the
	§	68th District Court
v.	§	Of Dallas County,
	§	Texas
BOUNPONE MENEVILAY	§	(TC# DV-0209543-C)
AND SYPANOME MENEVILAY,	§	
Appellees.		

JUDGMENT

The Court has considered this cause on the record and concludes there was no error in the judgment. We therefore affirm the judgment of the court below. We further order that Appellees recover from Appellants and their sureties, if any, see Tex. R. App. 43.5, on the judgment and all costs both in this Court and the court below for which let execution issue. This decision shall be certified below for observance.

IT IS SO ORDERED THIS 27TH DAY OF OCTOBER, 2005.

s/Richard Barajas
RICHARD BARAJAS, Chief Justice

Before Barajas, C.J., McClure, and Guaderrama, JJ. Guaderrama, J., sitting by assignment.

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

VON RATSAVONG AND	§	
FONG SOUPHANKHAYSY,	§	No. 08-05-00044-CV
Appellants,	§	Appeal from the
	§	68th District Court
v.	§	Of Dallas County,
	§	Texas
BOUNPONE MENEVILAY	§	(TC# DV-0209543-C)
AND SYPANOME MENEVILAY,	§	
Appellees.		

OPINION

This is an appeal from a breach of an alleged oral contract to sell real property. Appellants, Von Ratsavong and Fong Souphankhaysy, appeal a judgment awarding title to property located at 610 Neomi Street, Dallas, Texas to Appellees, Bounpone Menevilay and Sypanome Menevilay. On appeal, Appellants raise fifteen issues for review.

I. FACTUAL AND PROCEDURAL BACKGROUND

On October 8, 2002, Appellees filed a lawsuit against Appellants in which they alleged that on or about April of 1994, they entered into an agreement with the Appellants for the purchase of the property located at 611 Neomi Street in Dallas, Texas. At the time, the Appellees did not have the credit to purchase the house, but the agreement entered into allowed Appellees to borrow Appellants' credit to purchase the home. According to the Appellees, terms of the agreement were as follows: Appellees were to pay the note in the principal amount of $ 12,500 executed by the Appellants for payment of the house and premises. Upon payment of the total amount, the understanding was that Appellants would execute a general warranty deed conveying the title to the property to the

Appellees. As agreed upon, the Appellees paid a $ 2,000 down payment. At the time the agreement was entered into, the property was in poor condition and had been purchased "as is" with the understanding that the Appellees would complete the necessary repairs. Appellees moved into the property and began making repairs and improvements to the property. By the time the lawsuit was initiated, the Appellees had paid in full the debt and had made repairs in the home of an estimated cost of $ 28,000. The Appellants filed their original answer asserting a general denial to the allegations and asserting the following affirmative defenses: estoppel, waiver, lack of consideration, failure of consideration, lack of clean hands by plaintiffs, fraud, the statute of frauds, applicable statute of limitations, latches, and illegality.

On December 14 and 15, 2004, the trial court held a hearing. At the hearing, Bounpone Menevilay testified that he had known the Appellants for over thirty years and that they had been good friends, dating back to when they lived in Laos. He testified that in July of 1993, while he was living in California, Ratsavong visited their home; during his visit, he indicated that there was a house next to his in Texas, and that if Menevilay was interested in buying, Ratsavong would allow him to use his credit to do so. At the time, Menevilay did not have the necessary credit to purchase a house, but it is customary in the Laotian culture for friends to lend each other their credit for the purchase of homes and vehicles; it was customary to not sign written contracts for such agreements. Ratsavong indicated to Menevilay that the house was being sold for $14,500 and that Menevilay would need to give him $2,000 down payment and that he would take care of everything else. According to Menevilay, Ratsavong entered into a contract for the purchase of the home, but the understanding was that Menevilay would make the payments and that the house was really his.

Menevilay testified that the house was not in good condition and that it needed many repairs. When he bought the house, he indicated the bathroom was not in a usable condition. Menevilay testified that he repaired the bathroom, painted the exterior and interior of the house, he constructed a garage, improved the sidewalk and added a concrete driveway to the garage, he replaced a door and

windows, and he added a utility room for the washer and dryer. He paid for all the repairs and completed most of the work himself with the help of his wife. After a repair was completed, Ratsavong would often come over to see the improvement and stay for dinner to celebrate the accomplishment. Menevilay testified that he would talk to Ratsavong about some of the repairs because they were friends, and that he did not get a building permit for any of the improvements.

In addition to making these repairs, he testified that he made the mortgage payments, paid the insurance on the home, and the property taxes for the entire time he was living at the house, up to the point where litigation over the title was considered. Once he finished paying the mortgage on the house, Ratsavong refused to transfer the deed to the Appellees. Rather, on September 27, 2002, he received a Notice to Vacate and Notice of Termination of Tenancy at Will from Ratsavong's attorney. At no point in time did Appellees believe they were renting the home. Menevilay indicated that if that were the case, he would not have done any improvements to the house. He indicated that in the previous properties he had rented, he had never made any improvements.

During cross-examination, Menevilay indicated that in the past, he had signed a purchase contract for a mobile home, and rental leases for several properties he had rented. When asked if he found it strange that no contract was signed for the purchase of the home on 610 Neomi Street, he indicated that he did not think that Ratsavong would take the house away from him because they were good friends.

Mrs. Menevilay's testimony reiterated much of what Menevilay indicated in his testimony. She indicated that Ratsavong had approached them about buying the house using his credit in July of 1993. She indicated that Ratsavong had mentioned that he did not want to be driving long distances to visit them in California, and that this house was just next door to his home. She testified that Ratsavong asked for a $ 2,000 down payment; however, she never saw her husband actually give Ratsavong the money. She also indicated that much of the improvements on the home were done by her and her husband and that these occurred as soon as they move in

because the house was "ugly."

Ratsavong testified at trial as well. He indicated that he purchased the home in question for his children. The deed to the home is under his name and his wife's name, Fong Souphankhaysy. He indicated that he never told the Appellees anything about lending them his credit to purchase the house. He further denied having any conversation regarding the home in July of 1993 with the Appellees. He had gone to California to visit family and the only reason he visited with the Appellees was because his car broke down. He pointed out that he purchased the house on April 25, 1994, after the 1993 visit. In explaining how Appellees came to live in his home, Ratsavong testified that one day, he saw Menevilay parked outside the house on 610 Neomi Street. He did not know where the Appellees were living at the time or how they got to his house. At that point, Ratsavong testified that he asked Menevilay if he wanted to rent the house and indicated to him that it was in poor condition and that he would be responsible for any improvements and repairs. The rent was set at $258, plus taxes and insurance. His understanding of this agreement was that it was a rental contract. He never told Menevilay that after the mortgage was paid off, he would transfer the deed to the Appellees.

Ratsavong further indicated that Menevilay had completed improvements on the house and that only sometimes would Menevilay ask for his permission to make the improvements. He denied having received $2,000 from the Appellees as a down payment on the home. He testified that he and his wife paid that money by selling some of her jewelry. Mrs. Souphankhaysy also testified that the money for the down payment came from selling her jewelry. She also denied having any discussions in July of 1993 with the Appellees about allowing them to use their credit to buy the home at issue in this case.

After considering all the evidence, the trial court indicated that having only the credibility of the parties, it found the Appellees to be more credible and awarded title to the Appellees and reimbursement to the Appellants for the monies they paid in taxes and insurance after Appellees stopped paying those expenses. The trial court signed a judgment on December 22, 2004, in which it

found that:

> Bounpone Menevilay and Sypanome Menevilay are entitled to recover of and from Von Ratsavong and Fong Souphankhaysy the title to those premises located at 610 Neomi Street, Dallas, Dallas County, Texas 75217 . . . .

Appellants timely filed this notice of appeal.

II. DISCUSSION

Initially, we note that Appellants have asserted fifteen points of error in their appellate brief. After careful review of their brief and reply brief, we find that the Appellants have failed to properly brief Issue Nos. Four through Seven, Issue No. Ten, Issue No. Eleven, Issue No. Thirteen and Issue No. Fourteen. In Issue No. Four, Appellants argue that even if there was an oral contract, the Appellees admitted that they did not comply with the purported oral contract. Specifically, Appellants assert that Appellees failed to make the $2,000 down payment, pay the insurance and property taxes on the home. In Issue No. Five, Appellants contend there was a lack of consideration, thus error was committed in the trial court's decision to enforce the oral agreement. Appellants do not cite to any relevant case law in their discussion of this issue. Rather, in a two paragraph argument, they assert that lack of consideration was asserted as an affirmative defense and that Appellees indicated that Appellants wanted $20,000 for the home, which Appellees refused to pay. Appellants then reach the conclusion that this was lack of consideration. In Issue No. Six, Appellants assert that there was a failure of consideration on the Appellees part, making the enforcement of the oral contract by the trial court error. In Issue No. Seven, Appellants contend that the trial court committed error by only using the credibility of the parties to make its decision when it was clear that Appellants did not speak English and the translator

was not able to properly translate their testimony.[1] In Issue No. Ten, Appellants contend that error was committed in enforcing the oral contract because Appellees were unjustly enriched. In Issue No. Eleven, Appellants contend that error was committed in enforcing the oral contract because the Appellees lacked clean hands and could not obtain equitable relief. In Issue No. Thirteen, Appellants allege that the enforcement of the oral contract is not supported by evidence. In Issue No. Fourteen, Appellants assert that enforcement of the oral contract is against the overwhelming weight of the evidence.

Appellants' arguments in these issues contain no more than a recitation of the evidence presented at trial and a sentence, unsupported by any case law, stating that the standard of review is either de novo or abuse of discretion. Their arguments are not clear and do not present any legal principles supporting their contentions. Appellants also failed to cite to any legal authority to support the issues above. The brief "must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief." *TEX. R. APP. P. 38.1(g)*. *Rule 38* requires Appellants to provide us with such discussion of the facts and the authorities relied upon as may be requisite to maintain the point at issue. *See Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc., 106 S.W.3d 118, 128 (Tex. App.–Houston [1st Dist.] 2002, pet. denied); Franklin v. Enserch, Inc., 961 S.W.2d 704, 711 (Tex. App.--Amarillo 1998, no pet.)*. This is not done by merely uttering brief conclusory statements, unsupported by legal citations. *Tesoro Petroleum Corp., 106 S.W.3d at 128*. By presenting such attenuated, unsupported arguments, we find that Appellants have waived such complaints. We find Issue Nos. Four, Five, Six, Seven, Ten, Eleven, Thirteen, and Fourteen are

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[1]We additionally note that as is reflected in the record and as represented by Appellants' counsel at oral argument before this Court, there was no objection raised at trial regarding the translator or the translation of the testimony. To preserve a complaint for appellate review, a party must present to the trial court a timely request, objection, or motion stating the specific grounds for the ruling sought. Tex. R. App. P. 33.1(a). Therefore, we find that Issue No. Seven is also waived by failure to properly object at the trial below.

inadequately briefed and are, therefore, waived. For the reasons stated, we overrule Appellants' Issue Nos. Four, Five, Six, Seven, Ten, Eleven, Thirteen, and Fourteen.

In Issue No. One, Appellants contend that the trial court should have granted their motion for directed verdict because the Statute of Frauds prohibits the enforcement of the alleged oral agreement because it contained indefinite terms.[2] Texas law is well settled that a defendant who moves for a directed verdict after the plaintiff rests, but thereafter elects not to stand on its motion for instructed verdict, and proceeds with her own case, waives her motion for directed verdict unless the motion is reurged at the close of her case. *See Horton v. Horton, 965 S.W.2d 78, 86 (Tex. App.--Fort Worth 1998, no pet.)* (citing *Jacobini v. Hall, 719 S.W.2d 396, 398 (Tex. App.--Fort Worth 1986, writ ref'd n.r.e.)*; *Wenk v. City Nat'l Bank*, 613 S.W.2d 345, 348 (Tex. Civ. App.--Tyler 1981, no *writ)*; *1986 Dodge v. State, 129 S.W.3d 180, 183 (Tex. App.--Texarkana 2004, no pet.)* (citing *Cliffs Drilling Co. v. Burrows, 930 S.W.2d 709, 712 (Tex. App.--Houston [1st Dist.] 1996, no writ)*; *McMeens v. Pease, 878 S.W.2d 185, 190 (Tex. App.--Corpus Christi 1994, writ denied))*; *Wenk v. City Nat'l Bank, 613 S.W.2d 345, 348 (Tex. Civ. App.--Tyler 1981, no writ)* (applying this line of argument to nonjury trials). In this case, Appellants moved for a directed verdict after Appellees rested. After the trial court overruled the motion, Appellants proceeded with their own witnesses. At the conclusion of the evidence, Appellants did not reurge their motion for a directed verdict. Under these circumstances, any error under the denial of the motion for directed verdict is waived. Issue No. One, therefore, is overruled.

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[2]We note that because this case was tried to the bench, the Appellants' motion for a directed verdict is more properly termed a "motion for judgment." *Qantel Business Sys. v. Custom Controls*, 761 S.W.2d 302, 303 (Tex. 1988). If Appellants had preserved the issue, this would have been an important distinction because we review a judgment pursuant to a motion for judgment differently than a directed or instructed verdict. *Id.* At 303-04. So as not to create confusions, however, we will refer to the motion as a motion for directed verdict in the remainder of the discussion of Issue No. One.

We continue our discussion of Appellants points of error by grouping Issue Nos. Two, Three, and Nine and discussing them together, as we believe each is raising a legal sufficiency argument. In Issue No. Two, Appellants argue that the trial court committed error by enforcing the oral agreement because the Statute of Frauds should have prohibited the enforcement of an alleged indefinite oral agreement for the sale of property. In their discussion of Issue No. Two, Appellants rely on the argument made in Issue No. One. In Issue No. Three, Appellants argue that the exception to the Statute of Frauds was not met by the Appellees, making the enforcement of the oral agreement by the trial court an error. Appellants contend that the Appellees did not pay consideration for the oral contract, failing to meet the first requirement of the exception. Appellants further contend that there is also no evidence that permanent and valuable improvements were made to the property with their consent. In Issue No. Nine, Appellants assert that the trial court committed error in enforcing the oral contract against Mrs. Souphankhaysy because there was no evidence that Mrs. Souphankhaysy made any oral statements or oral agreement for the sale of the property in question.

Standard of Review

In reviewing the legal sufficiency of the evidence, we consider the evidence in the light most favorable to the challenged finding, disregarding all evidence and inferences to the contrary. *Bradford v. Vento, 48 S.W.3d 749, 754, 44 Tex. Sup. Ct. J. 655 (Tex. 2001)*. The evidence is legally sufficient if more than a scintilla of evidence supports the finding. *Formosa Plastics Corp. USA v. Presidio Engineers and Contractors, Inc., 960 S.W.2d 41, 48, 41 Tex. Sup. Ct. J. 289 (Tex. 1998)*. "More than a scintilla of evidence exists where the evidence supporting the finding, as a whole, 'rises to a level that would enable reasonable and fair-minded people to differ in their conclusions.'" *Burroughs Wellcome Co. v. Crye, 907 S.W.2d 497, 499, 38 Tex. Sup. Ct. J. 848 (Tex. 1995)* (quoting *Transp. Ins. Co. v. Moriel, 879 S.W.2d 10, 25, 37 Tex. Sup. Ct. J. 883 (Tex. 1994)*). Whether particular facts are sufficient to establish a taking presents a question of law that we review de novo, but we rely on the

fact finder to resolve disputed facts underlying that determination. *See Mayhew v. Town of Sunnyvale, 964 S.W.2d 922, 933, 41 Tex. Sup. Ct. J. 517 (Tex. 1998).* When a party appeals from a nonjury trial, it must complain of specific findings and conclusions of the trial court, because a general complaint against the trial court's judgment does not present a justiciable question. *Fiduciary Mortgage Co. v. City Nat'l Bank, 762 S.W.2d 196, 204 (Tex. App.--Dallas 1988, writ denied).* When an appellant does not request or file findings and conclusions by the trial court, as in this case, the appellate court presumes the trial court found all fact questions in support of its judgment, and the reviewing court must affirm that judgment on any legal theory finding support in the pleadings and evidence. *Point Lookout West, Inc. v. Whorton, 742 S.W.2d 277, 278, 31 Tex. Sup. Ct. J. 104 (Tex. 1987).*

As we understand, in Issue No. Two, Appellants allege that there was no evidence offered of the definite terms of the contract. Particularly, Appellants complain that there was no evidence of what the actual price of the contract was. Reviewing the record in the light most favorable to such a finding, we find that the testimony provided by the Appellees in which they indicated that Ratsavong had represented that the home was worth $14,500 indicating this was the price of the contract. The agreement they entered into was for the purchase of the home, and the understanding was that upon completion of payment of the mortgage, the Appellants would transfer the deed to the Appellees. We find that the evidence is legally sufficient to support a finding that the oral contract contained a definite term as to the total price of the contract. We overrule Issue No. Two.

The Statute of Frauds exists to prevent fraud and perjury in certain kinds of transactions by requiring agreements to be set out in a writing signed by the parties. *See Haase v. Glazner, 62 S.W.3d 795, 799 n.21, 45 Tex. Sup. Ct. J. 141 (Tex. 2001)* (citing *see RESTATEMENT (SECOND) OF CONTRACTS § 131 cmt. c* (1981); 9 WILLISTON ON CONTRACTS § 21:1 (4th ed. 1999); *see also Hooks v. Bridgewater, 111 Tex. 122, 229 S.W. 1114, 1116 (1921)*). In *Hooks, 229 S.W. at 1116*, the Texas Supreme Court held that "to relieve a parol sale of land from the operation of the statute of frauds,

three things were necessary: 1. Payment of the consideration, whether it be in money or services. 2. Possession by the vendee. And 3. The making by the vendee of valuable and permanent improvements upon the land with the consent of the vendor; or, without such improvements, the presence of such facts as would make the transaction a fraud upon the purchaser if it were not enforced." Each of these three elements is indispensable, and they must all exist. *Hooks, 229 S.W. at 1116.*

In Issue No. Three, we understand Appellants to be making legal insufficiency claims for a finding of elements one and two of the Statute of Frauds exception described above. At trial, Appellees testified that they paid a $ 2,000 down payment as requested by the Appellants. As soon as they moved into the house, Appellees testified that they began making repairs, beginning with the bathroom. Other repairs included constructing a garage and a concrete driveway leading to it, adding a utility room to the house, replacing a kitchen door, improving the sidewalk, and painting the exterior and interior of the house. The estimated costs of making these improvements was $28,000. Although much of this testimony came from Appellees' oral testimony, the trial court found that such oral testimony was sufficient and did not require actual documentation of receipts to be presented. The Appellants' home was located across the street from the Appellees, allowing the trial court to infer that the Appellants could have been aware of the repairs being done to the home. The Appellees also testified that on several occasions, Ratsavong would come over and have dinner to celebrate the completion of an improvement. There was no testimony provided by the Appellants that they opposed any of the repairs being done. Rather, Appellants testified that Appellees would sometimes ask for permission to complete the improvements. After reviewing the record in the light most favorable to the implied findings and disregarding all evidence and inferences to the contrary, we find the evidence was legally sufficient to support a finding that the consideration paid by the Appellees was in the form of the $2,000 down payment and that Appellees made valuable and permanent improvements to the property with Appellants' consent. We therefore overrule Issue No. Three.

In Issue No. Nine, Appellants contend that there is no evidence to support Mrs. Souphankhaysy of her ownership of the property. Specifically, Appellants argued that there was no evidence that Mrs. Souphankhaysy made any oral agreement to transfer title to the property. Appellants cite to *Dalton v. Don J. Jackson, Inc., 691 S.W.2d 765, 767-68 (Tex. App.--Austin 1985, no writ)*, *Vallone v. Miller, 663 S.W.2d 97, 98 (Tex. App.--Houston [14th Dist.] 1983, writ ref'd n.r.e.)*, and *TEX. FAM. CODE ANN. § 3.102* (Vernon 1998) to support their contention. In *Dalton*, the court held that one spouse may not convey to a third party, so as to effectuate a partition by creating a tenancy-in-common between the remaining spouse and the third party. *See Dalton, 691 S.W.2d at 768.* In *Vallone*, the court found that one spouse cannot alone convey or encumber joint management community property unless spouses have otherwise agreed. *See Vallone, 663 S.W.2d at 99.* The facts in this case differ from those in *Dalton* and *Vallone.*

In this case, the deed to the house was under both Ratsavong's and Souphankhaysy's names. There was testimony that Ratsavong would attend these dinner celebrations after the completion of a repair. Given the proximity of Appellants' home to the property in question, the trial court could have inferred that Souphankhaysy was also aware of the improvements being done to the home. She testified that she also saw the Appellees on the trip to California in July of 1993. Although she testified that her jewelry was sold to pay the down payment on the home and that she did not see the Appellees pay her husband $ 2,000, she also could not say with certainty that Appellees did not give him this money. The trial court, being the judge of the credibility of the witnesses, found the testimony of the Appellees more credible. In so doing, he could have inferred that Mrs. Souphankhaysy was also aware of the agreement made with the Appellees concerning the purchase of the home. A review of the record shows that the disputed fact over whether an agreement was made between the Appellants and the Appellees was resolved in favor of the Appellees. We therefore find that the evidence was legally sufficient to support a finding that Appellant Souphankhaysy was also a party to this oral agreement. Issue No. Nine, therefore, is overruled.

In Issue No. Eight, Appellants contend that the Appellees' claims were barred by the four-year statute of limitations, making the trial court's enforcement of the oral contract error. According to the Appellants, the oral contract was entered into in 1994, but the lawsuit was not filed until October of 2002, not within the four-year statute of limitations for a breach of contract in Texas. *See TEX. CIV. PRAC. & REM. CODE ANN. § 16.051* (Vernon 1997). In their reply brief, Appellants argue that the Appellees knew in May of 1994 that they did not receive a deed to the property, constituting a breach of the agreement. Therefore, the latest the lawsuit could be initiated was April of 1998. We disagree with Appellants' assertions.

A general four-year statute of limitations for breach of contract applies. *See TEX. CIV. PRAC. & REM. CODE ANN. § 16.051*; *Stine v. Stewart, 80 S.W.3d 586, 592, 45 Tex. Sup. Ct. J. 966 (Tex. 2002)*. A party asserting a breach of contract claim must sue not later than four years after the day the claim accrues. *Id.* It is well-settled law that a breach of contract claim accrues when the contract is breached or when the claimant has notice of facts sufficient to place him on notice of the breach. *See Murphy v. Campbell, 964 S.W.2d 265, 270, 41 Tex. Sup. Ct. J. 193 (Tex. 1997)*; *see also Smith v. Fairbanks, Morse & Co., 101 Tex. 24, 102 S.W. 908, 909 (1907)*; *see also Slusser v. Union Bankers Ins. Co., 72 S.W.3d 713, 717 (Tex. App.--Eastland 2002, no pet.)*.

Here, the earliest date on which Appellants could have breached the promise to transfer the deed was in 2001, the date when the mortgage was paid in full and the earliest Appellees testified Appellants refused to transfer the deed. Appellees sued Appellants in October of 2002, less than four years after this occurred. Applying the general four-year statute of limitations to Appellees' claims, Appellees timely filed suit. *See TEX. CIV. PRAC. & REM. CODE ANN. § 16.051*. We therefore overrule Issue No. Eight.

In Issue No. Twelve, Appellants contend that Appellees' failure to plead and prove the necessary elements of a trespass to try title action made the enforcement of the oral contract error. Specifically, Appellants point to the fact that Appellees' original petition incorrectly identified the property by listing the address as 611 Neomi Street, instead of 610 Neomi Street. The address 611

Neomi Street is the location of the Appellants' homestead and was the incorrect address. By failing to specifically and properly identify the property in their pleadings, Appellants assert that Appellees cannot prevail in a trespass to try title action.

Before reaching the merits of Appellants' challenge, we note that they had cited only to one case in the body of their argument. After a careful review of *Martin v. Amerman, 133 S.W.3d 262, 47 Tex. Sup. Ct. J. 285 (Tex. 2004)*, we fail to see its relevance to Appellants' assertion and Appellants do not provide such a link in their argument. Among other things, *TEX. R. APP. P. 38.1* requires Appellants to provide the Court with a discussion of the facts and the authorities relied upon as may be requisite to maintain the point at issue. *See Tesoro Petroleum Corp., 106 S.W.3d at 128*; *Franklin, 961 S.W.2d at 711*. Appellants' minimal briefing of this issue fails to properly preserve the error for review by this Court.

Moreover, this argument is raised for the first time on appeal. The record does not reflect any objection to what appears to be a clerical mistake in the pleadings.[3] In order to preserve an issue for appellate review, a party must present to the trial court a timely request, objection, or motion stating the specific grounds for the ruling sought. *TEX. R. APP. P. 33.1(a)*. We find that Issue No.

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[3]Appellees' original petition contained the following:

On or about April 1994, the Plaintiffs entered into an agreement with the Defendants, that the Defendants would purchase that property described as:

> "Lot 14, Block N/6256 of Home Gardens Addition, Unit No. 3, an addition to the City of Dallas, Texas and being 611 Neomi Street, Dallas, Dallas County Texas, 75217." (*Emphasis added*).

The correct address was 610 Neomi Street. In Appellees' motion for temporary restraining order and injunction, the correct address is reflected. During the hearing, there was no confusion as to the fact that the property in question was 610 Neomi Street. The final judgment correctly recites:

[T]hose premises located at 610 Neomi Street, Dallas, Dallas County, Texas 75217 and being described as:

> Lot 14, Block N/6256 of Home Gardens Addition, Unit No. 3, an addition to the City of Dallas, Texas.

The descriptions of the property are the same, thereby appearing that the incorrect address in the original petition was nothing more than a careless typing error.

Twelve is not properly preserved and waived for inadequate briefing as well. Issue No. Twelve, therefore, is overruled.

In Issue No. Fifteen, Appellants assert that in enforcing the oral contract, the trial court deprived Appellants of their Texas and United States constitutional rights to due process and the right not to be deprived of their property without due process of law, and their rights to due course of law. Appellants have also waived any error regarding their due process claims. We find no indication in the record before us that Appellants voiced their complaint to the trial court, and therefore, we find that error has not been preserved in this regard. *See TEX. R. APP. P. 33.1(a); see also Dreyer v. Greene, 871 S.W.2d 697, 698, 37 Tex. Sup. Ct. J. 57 (Tex. 1993); Pirtle v. Gregory, 629 S.W.2d 919, 920, 25 Tex. Sup. Ct. J. 250 (Tex. 1982).* Issue No. Fifteen is overruled.

Having overruled each of Appellants' issues on review, we affirm the judgment of the trial court.

s/Richard Barajas
RICHARD BARAJAS, Chief Justice

October 27, 2005

Before Barajas, C.J., McClure, and Guaderrama, JJ. Guaderrama, J., sitting by assignment.

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

VON RATSAVONG AND	§	
FONG SOUPHANKHAYSY,	§	No. 08-05-00044-CV
Appellants,	§	Appeal from the
	§	68th District Court
v.	§	Of Dallas County,
	§	Texas
BOUNPONE MENEVILAY	§	(TC# DV-0209543-C)
AND SYPANOME MENEVILAY,	§	
Appellees.		

OPINION

Rehearing Petition Denied.

Dated: November 23, 2005.

SUPREME COURT OF TEXAS

VON RATSAVONG AND FONG SOUPHANKHAYSY, Petitioners,	§	CASE NO. 05-1071
	§	No. 08-05-00044-CV
	§	Appeal from the 68th District Court
v.	§	Of Dallas County, Texas
BOUNPONE MENEVILAY AND SYPANOME MENEVILAY, Respondents.	§	

JUDGMENT

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

Date: 4/21/2006

Issue of an indefinite oral contract being unenforceable raised at the December 14, 2004 trial in opening statements by Petitioners' attorney Mr. Timothy Mitchell in the 68th District Court of Dallas County Texas.

Page 12 lines 2 through 9

MR. MITCHELL: ... I guess the statute of frauds is the basic issue here. This is why we have the statute of frauds. And I believe when we–after we hear evidence and we make our motion for our directed verdict, I believe that the case law we'll cite at the time by the Texas Supreme Court will show that the agreement must be definite to even get to the exception. The oral agreement must be definite....

Issue Number 9 (there was no evidence that the Petitioner Defendant Wife ever made any oral contract) raised at pages 40-42 of appellants brief filed with the Eighth District of Texas at El Paso Court of Appeals on or about June 8, 2005.

Issue Number Nine: The District Court Committed Error by Enforcing an Alleged Oral Agreement Against Defendant Wife Because There Was No Evidence That Defendant Wife Made Any Oral Statements or Oral Agreement for the Sale of Real Estate.....

Issue Number 15 (the District Court enforcing an alleged oral agreement for the sale of real estate against Petitioners deprived Petitioners of their constitutional rights to not be deprived of their property without Due Process of Law as afforded to them by the Texas and United States Constitutions) raised at pages 47-50 of appellants brief filed with the Eighth District of Texas at El Paso Court of Appeals on or about June 8, 2005.

Issue Number Fifteen: The District Court Enforcing an Alleged Oral Agreement for the Sale of Real Estate Against Defendant Wife and Husband Deprived Defendant Wife and Husband of Their Constitutional Rights to Not Be Deprived of Their Property

Without Due Process of Law as Afforded to Them by the Texas and United States Constitutions.....

Issue Number 2 (an indefinite oral contract is unenforceable) raised at page 21 of appellants brief filed with the Eighth District of Texas at El Paso Court of Appeals on or about June 8, 2005.

Issue Number Two: The District Court Committed Error by Enforcing an Alleged Oral Agreement Because the Statute of Frauds Should Have Prohibited the Enforcement of an Alleged Indefinite Oral Agreement for the Sale of Real Estate.....

Issue Number 3 (the Statute of Frauds should have prohibited the enforcement of an alleged oral agreement for the sale of real estate) raised at pages 21-31 of appellants brief filed with the Eighth District of Texas at El Paso Court of Appeals on or about June 8, 2005.

Issue Number Three: The District Court Committed Error by Enforcing an Alleged Oral Agreement Because the Statute of Frauds Should Have Prohibited the Enforcement of an Alleged Oral Agreement for the Sale of Real Estate as the Exception to the Statute of Frauds Was Not Met.....

Issue Number 3 (there was no evidence that the Petitioner Defendant Wife ever made any oral contract) raised at pages 10-13 of appellants petition for review filed with the Texas Supreme Court on or about February 10, 2006.

Issue Number Three: The Appeals Court Committed Error by Enforcing an Alleged Oral Agreement Against Petitioner Defendant Wife Ms. Souphankhaysy Because There Was No Evidence That Ms. Souphankhaysy Made Any Oral Statements or Oral Agreement for the Sale of Real Estate.....

Issue Number 4 (the District Court and the Appeals Court enforcing an alleged oral agreement for the sale of real estate against

Petitioners deprived Petitioners of their constitutional rights to not be deprived of their property without Due Process of Law as afforded to them by the Texas and United States Constitutions) raised at pages 13-15 of appellants petition for review filed with the Texas Supreme Court on or about February 10, 2006.

> Issue Number Four: The Appeals Court Enforcing an Alleged Oral Agreement for the Sale of Real Estate Against Ms. Souphankhaysy Deprived Her of Her Constitutional Rights to Not Be Deprived of Her Property Without Due Process of Law as Afforded to Her by the Texas and United States Constitutions.....

Issue Number 1 (an indefinite oral contract is unenforceable) raised at pages 4-8 of appellants petition for review filed with the Texas Supreme Court on or about February 10, 2006.

> Issue Number One: The Appeals Court Committed Error by Enforcing an Alleged Oral Agreement Because the Statute of Frauds Should Have Prohibited the Enforcement of an Alleged Indefinite Oral Agreement for the Sale of Real Estate.....

Issue Number 2 (the Statute of Frauds should have prohibited the enforcement of an alleged oral agreement for the sale of real estate) raised at pages 8-10 of appellants petition for review filed with the Texas Supreme Court on or about February 10, 2006.

> Issue Number Two: The Appeals Court Committed Error by Enforcing an Alleged Oral Agreement Because the Statute of Frauds Should Have Prohibited the Enforcement of an Alleged Oral Agreement for the Sale of Real Estate as the Exception to the Statute of Frauds Was Not Met.....

Issue Number 9 (there was no evidence that the Petitioner Defendant Wife ever made any oral contract) raised at pages 8-11 of appellants motion for rehearing filed with the Eighth District of Texas at El

Paso Court of Appeals on or about November 7, 2005.

Issue Number Nine: The District Court Committed Error by Enforcing an Alleged Oral Agreement Against Defendant Wife Because There Was No Evidence That Defendant Wife Made Any Oral Statements or Oral Agreement for the Sale of Real Estate.....

Issue Number 15 (the District Court enforcing an alleged oral agreement for the sale of real estate against Petitioner Wife deprived her of their constitutional rights to not be deprived of her property without Due Process of Law as afforded to her by the Texas and United States Constitutions) raised at pages 12-15 of appellants motion for rehearing filed with the Eighth District of Texas at El Paso Court of Appeals on or about November 7, 2005.

Issue Number Fifteen: The District Court Enforcing an Alleged Oral Agreement for the Sale of Real Estate Against Appellant Ms. Souphankhaysy Deprived Appellant Ms. Souphankhaysy of Her Constitutional Rights to Not Be Deprived of Her Property Without Due Process of Law as Afforded to Her by the Texas and United States Constitutions.....

Issue Number 2 (an indefinite oral contract is unenforceable) raised at pages 1-5 of appellants motion for rehearing filed with the Eighth District of Texas at El Paso Court of Appeals on or about November 7, 2005.

Issue Number Two: The District Court Committed Error by Enforcing an Alleged Oral Agreement Because the Statute of Frauds Should Have Prohibited the Enforcement of an Alleged Indefinite Oral Agreement for the Sale of Real Estate.....

Issue Number 3 (the Statute of Frauds should have prohibited the enforcement of an alleged oral agreement for the sale of real estate) raised at pages 5-8 of appellants motion for rehearing filed with the

Eighth District of Texas at El Paso Court of Appeals on or about November 7, 2005.

Issue Number Three: The District Court Committed Error by Enforcing an Alleged Oral Agreement Because the Statute of Frauds Should Have Prohibited the Enforcement of an Alleged Oral Agreement for the Sale of Real Estate as the Exception to the Statute of Frauds Was Not Met.....

Trial Excerpts from Petitioner Wife Fong Soufhankhaysy December 15, 2004 Trial Direct Examination (questions by Petitioners' attorney Mr. Timothy Mitchell, answers by Ms. Fong Soufhankhaysy, objections by Respondents attorney Alex Bickley):

Page 47 lines 1 through 25 and Page 48 line 1

[Question] During July of 1993, were there any discussions between you and the Menevilays about buying the house at 610 Neomi?

[Answer] No.

[Question] Did the Menevilays talk about a $2,000 down payment in California in July of 1993?

[Answer] No, nothing about it.

[Question] Did the Menevilays give you or your husband $2,000 in California in July of 1993?

[Answer] I don't see anything.

[Question] Where did you get the $2,000 from?

[Answer] I sell my gold.

[Question] What gold did you sell?

[Answer] (Unintelligible) gold.

THE REPORTER: What?

THE INTERPRETER: V-i-a-t, Viat gold.

[Question] Did you sell three pieces of jewelry to get the $2000?

[Answer] Yes.

Page 49 lines 14 through 15

[Question] Is your name on the deed to the house at 610 Neomi?

[Answer] Yes.

[Question] Are you asking the Court award your title to the

house at 610 Neomi?

[Answer] Yes.

Trial Excerpts from Petitioner Wife Fong Soufhankhaysy December 15, 2004 Trial Cross Examination (questions by Respondents attorney Alex Bickley, answers by Ms. Fong Soufhankhaysy, objections by Petitioners' attorney Mr. Timothy Mitchell):

Page 50 lines 8 through 12

[Question] Did the–did the Menevilays ever pay you or your husband $2,000 in California, in Dallas or anywhere else?

[Answer] I never see that.

Page 50 lines 22 through 24

[Question] Did you ever hear any discussions as to whether this was a sale or a rental contract?

[Answer] I heard my husband say rent.

Trial Excerpts from Petitioner Husband Von Ratsavong's December 15, 2004 Trial Direct Examination(questions by Petitioners' attorney Mr. Timothy Mitchell, answers by Mr. Von Ratsavong, objections by Respondents attorney Alex Bickley):

Page 6 lines 21 through 23

[Question] Do you own the property at 610 Neomi that is the subject of this lawsuit?

[Answer] Yes. I'm the owner of that house.

Page 7 lines 1 through 22

MR. MITCHELL: I'm handing the witness what has been marked Defendants Exhibit 4.

[Question] Do you know what this document is?

[Answer] This document I go and sign with a lawyer.

[Question] What is the document for?

[Answer] This agreement between sale and buy by the law of the United States.

[Question] Is this the deed to the house at 610 Neomi?

[Answer] Yes.

MR. MITCHELL: I would offer Defendants Exhibit 4.

MR. BICKLEY: May I see it?

MR. MITCHELL: Yes. It's No. 4.

MR. BICKLEY: No. 4?

MR. BICKLEY: No objection.

THE COURT: Admitted.

[Question] On exhibit 4 who is listed as the owner of the property?

[Answer] I am and my wife the owner of the house.

Page 10 lines 12 through 13

[Question] Why did you let the Menevilays live in the house?
[Answer] He's my friend. I saw him and I let him rent it.

Page 10 line 25 and Page 11 lines 1 through 13

[Question] Did Mr. Menevilay ask you to rent the house in Dallas?
[Answer] Yes.
[Question] When was the first time you and Mr. Menevilay discussed leasing the house?
[Answer] The first time we don't say anything. We don't see him, but the first time we talking the front of the house.
[Question] When you were in the front of the house, do you know where Mr. Menevilay was living then?
[Answer] I don't know where he live, but I saw him stop the car the front of my house.
[Question] So the first time, did Mr. Menivilay approach you in front of your house in Dallas, Texas?
[Answer] Yes.

Page 12 lines 16 through 25 and Page 13 lines 1 through 21

[Question] When did the house at 610 Neomi go up for sale?
[Answer] They put the sign for sale of the April the 4th. Something like that. I can't remember exactly.
[Question] Of what year?
[Answer] 1994.
[Question] When did you buy the house at 610 Neomi?
[Answer] 1994, April the 25th.
[Question] Was that–was the house at 610 Neomi only on the market a few weeks before you bought it?
[Answer] I–I get off from work and I see the sign for sale and I go to talk to the owner and I want to buy that so they remove the sign.
[Question] And when was that? What month?
[Answer] After they put the sign for sale, after one week, about April, then I bought it.

[Question] And what year was that in?
[Answer] 1994.
[Question] When you talked to the Menevilays in July of 1993 in California, did you and the Menevilays talk about the house at 610 Neomi?
[Answer] No.
[Question] In July of 1993 when you were in California, did you own the house then at 610 Neomi?
[Answer] I don't know about that. I'm not owning anything on that time.
[Question] When you were in California in July of 1993, did the Menevilays give you $2,000?
[Answer] I don't know about that. He lie.

Page 31 lines 1 through 25

[Question] Mr. Menevilay testified yesterday that he paid the $2,000 down payment on the house at 610 Neomi. Is that true?
[Answer] No.
[Question] Did you pay or–who paid the $2,000 down payment on the house at 610 Neomi?
[Answer] Me and my wife we have to sell the necklace and the bracelet that get that money to pay for that house.
MR. MITCHELL: May I approach the witness, Your Honor?
THE COURT: You may.
[Question] Do you have Defendants Exhibit 4?
[Answer] Yes.
[Question] On the first page of Defendants Exhibit 4, does that show a receipt for the $2,000 that you paid?
[Answer] Yes.
[Question] Did Mr. Menevilay give you the $2,000 that you paid to Mr. Ashwater?
[Answer] I don't know. I don't heard anything about that.
[Question] So was the $2,000 that you paid Mr. Rickey Ashwater your money?
[Answer] Yes. My money and my wife money.

[Question] Are you asking this court to confirm your ownership of the property at 610 Neomi?

[Answer] Yes.

Trial Excerpts from Petitioner Husband Von Ratsavong's December 15, 2004 Trial Cross Examination (questions by Respondents attorney Alex Bickley, answers by Mr. Von Ratsavong, objections by Petitioners' attorney Mr. Timothy Mitchell):

Page 32 lines 11 through 25 and **Page 33 line 1**

[Question]	In July you were at the house of Mr. Menevilay weren't you?
[Answer]	Yes.
[Question]	Did you talk about his moving to Texas?
[Answer]	No.
[Question]	No mention of his leaving California and coming to Texas?
[Answer]	No.
[Question]	When did you first talk to him about his moving to Texas?
[Answer]	Never.
[Question]	Never?
[Answer]	Never
[Question]	Mr. Ratsavong, you were good friends with Mr. Menevilay back then, weren't you?
[Answer]	Yes.

Trial Excerpts from Petitioner Husband Von Ratsavong's December 15, 2004 Trial Re-Direct Examination(questions by Petitioners' attorney Mr. Timothy Mitchell, answers by Mr. Von Ratsavong, objections by Respondents attorney Alex Bickley):

Page 45 lines 8 through 17

[Question]	When did you stop being friends with Mr. Menevilay?
[Answer]	After he give me the paper from the lawyer. I don't know what happened that time.
[Question]	So would that have been in the year 2001 or 2002?
[Answer]	'01.
[Question]	When you offered to sell the house at 610 Neomi for $20,000, was the house worth more than that?
[Answer]	Yes.
[Question]	How much was it worth then?
[Answer]	Over 30,000.

Trial Excerpts from Respondent Plaintiff Husband Mr. Menevilay's December 14, 2004 Trial Cross Examination(questions by Petitioners' attorney Mr. Timothy Mitchell, answers by Mr. Menevilay, objections by Respondents attorney Alex Bickley):

Page 26 lines 2 through 5

[Question] Is your recollection based on Defendants' exhibit 16 that the conversation that you talked about earlier between you and Mr. Ratsavong took place sometime in July 1993?

[Answer] Yes.

Page 28 lines 1 through 5

[Question] In that July 1993 conversation, did y'all talk about how much the house was going to cost?

[Answer] We don't talking about the price of the house, but we talking about $2,000 down.

[Question] So in July 1993, all you discussed concerning price was the $2,000 down payment; is that correct?

[Answer] Yes. (Emphasis added)

Page 41 lines 8 through 25

[Question] How much in–strike that. I believe you testified earlier that Mr. Ratsavong said that he would sign the deed to the property at 610 Neomi over to you if you would pay him $20,000; is that correct?

[Answer] Yes.

[Question] Isn't it true that the house at 610 Neomi is appraised at approximately $32,000?

[Answer] I don't know exactly.

MR. MITCHELL: Your Honor, may I approach the witness?

THE COURT: You may.

[Question] I'm handing you what's been marked Defense Exhibit No. 6. Can you identify Defendants Exhibit 6 that I just handed you?

[Answer] (No Response)

[Question] Is Defendants Exhibit 6 a Dallas Central Appraisal District certifying 2002 appraisal for 610 Neomi Street?

Page 42 lines 1 through 25

[Answer] (No Response)

[Question] Look on the first page. Are you looking at Defendants Exhibit 6?

[Answer] Yes.

[Question] Can you reading English?

[Answer] Yes, a little bit, but not really understand, but it's okay.

[Question] On the first page of Defendants Exhibit 6 do you see where it says in the middle, Certified 2002 total market value $32,090?

[Answer] Yes.

[Question] Does that seem like a fair estimate of the market value of 610 Neomi in 2002?

[Answer] Are you asking me, sir?

[Question] Yes.

[Answer] I don't know about that.

[Question] Based on Defendants Exhibit No. 6, what is the house at 610 Neomi appraised at for 2002 for the total market value?

[Answer] I don't know.

MR. MITCHELL: I would move that Defendants Exhibit No. 6 be introduced in evidence as a public record.

MR. BICKLEY: No objection.

THE COURT: Admitted.

Trial Excerpts from Respondent Plaintiff Wife Sypanome Menevilay's December 14, 2004 Trial Cross Examination(questions by Petitioners' attorney Mr. Timothy Mitchell, answers by Mr. Menevilay, objections by Respondents attorney Alex Bickley):

Page 58 lines 10 through 25

[Question] I believe you testified in 1993 that in California you overheard a conversation allegedly Mr. Ratsavong said that he had a house next to his house that he wanted to sell; is that correct?

[Answer] It's not–that's not he house. Somebody house. But he say, If you want to buy, give me 2,000 I buy for you.

[Question] Did you have any conversations with Mr. Ratsavong concerning doing any of the repairs on the house?

[Answer] Why I have to talk to him because that's my house? I'm the one pay for and I'm the one fix it. Why I have to ask him that?

Question] So the answer is no?

[Answer] Yes, no.

[Question] Why was good credit or bad credit an issue in the purchase of 610 Neomi when it was purchased through owner financing?

Page 59 lines 1 through 13

Answer] My husband, he don't understand about that. And he thought, you know, if he don't have a credit that mean he cannot buy the house and he listening to his friend. So give him $2,000 and he buy–he taking care of everything. Then after done the deal

and he give the paper to us.

Question] Did you see the $2,000?

[Answer] I don't see the 2,000, but my husband call me from here to–and tell me, you know, with this house we need to have $2,000 to down payment. And I ask him, do you have the $2,000? He say, I have a $2,000. Then Mr. Ratsavongg say, I want you to come live over here and live with me.

2253

Prepared by the State Bar of Texas for use by lawyers only.
Revised 10-85.

WARRANTY DEED WITH VENDOR'S LIEN

Deed 15.00
Total 15.00
A001 0927 0000000 8066 3:35 pm 4/29/94

Date: April 25, 1994

Entered into evidence
on Dec. 15, 2004 at
Trial 68th District Court
Dallas County, Texas

Grantor: Rickey Ashwander

Grantor's Mailing Address (including county):
802 Laguna, Garland, Dallas County, Texas, 75043

Grantee: Sourivong Ratsavong and wife Fong Souphankaisy

Grantee's Mailing Address (including county):
611 Neomi Street, Dallas, Dallas County, Texas, 75217

Consideration:

The sum of Two Thousand and no/100 ($2,000.00) Dollars cash, the receipt of which is hereby acknowledged, and,

The execution by grantees of one certain, vendor's lien note of even date herewith, in the principal sum of Twelve Thousand, Five Hundred and no/100 ($12,500)Dollars bearing interest from date at the rate of Nine (9%) percent, per annum, payable to grantor in sixty (60) monthly installments of $259.48 each, interest included, first such installment due on or before the expiration of thirty (30) days from date of closing and a like installment on or before the same date in each succeeding month thereafter until paid in full.

Property (including any improvements):

Being Lot 14 in Block N/6256 of HOME GARDENS ADDITION, UNIT NO. 3, an addition to the City of Dallas, Texas, according to the Map thereof recorded in Volume 6, Page 166 of the Map Records of Dallas County, Texas.

Reservations from and Exceptions to Conveyance and Warranty

Subject to any and all restrictions and/or easements of record, and to the special disclosures, disclaimers, limitations and conditions set forth in Exhibit A, attached hereto and made a part of this conveyance.

Grantor, for the consideration and subject to the reservation from and exceptions to conveyance and warranty, grants, sells. and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor hereby binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to warranty.

The vendor's lien against and superior title to the property are retained until each note described is fully paid according to its terms, at which time this deed shall become absolute.

When the context requires, singular nouns and pronouns include the plural.

s/Ricky Ashwander
Ricky Ashwander

(Acknowledgment)

STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on the 25th day of April, 1994 by Rickey Ashwander.

Robert W. Finklea
Notary Public, State of Texas
My Comm. Expires 9-30-96

s/Robert W. Finklea
Notary Public, State of Texas

After Recording Return to:
Sourivong Ratsavong
611 Neomi Street
Dallas, Texas 75217

Prepared in the Law Office Of
Robert W. Finklea
10915 Garland Rd.
Dallas, Texas 75218

EXHIBIT A SUPPLEMENTING AND ADDENDUM TO DEED FROM RICKEY ASHWANDER TO SOURIVONG RATSAVONG AND WIFE FONG SOUPHANKAISY

This conveyance of Lot 14, Block N/6256 of Home Gardens Addition, Unit No. 3 to the City of Dallas is subject to the following special disclosures, disclaimers, limitations and conditions:

1. Grantor makes no representation or warranty as to whether the property is habitable.

2. Grantor makes no representation or warranty as to the quality of repairs and construction performed on the property prior to the date of this conveyance.

3. Grantor makes no representation or warranty as to the degree of completeness of repairs, if any, made to the property prior to the date of this conveyance.

4. Grantor makes no representation or warranty as to the condition repair, completeness or useability of all plumbing, foundation, painting, utilities, electrical wiring, flooring, carpentry, carpeting or roofing of the property being conveyed.

5. Grantor makes no representation or warranty as to whether

the property being deeded to Grantees is safe for habitation or whether there are any hidden or latent defects in the property.

6. Grantor makes no representation or warranty that the water service, plumbing, gas service, electrical wiring, roofing or other conditions of the property meet current housing standards of the industry or any government agency, or that they comply with the building codes of the City of Dallas.

7. The only warranty express or implied that Grantor makes is that Grantees will be given on closing date a general warranty deed conveying good and indefeasible title to the property to them, free of any liens or encumbrances save and except the vendor's lien and deed of trust executed by Grantees to secure vendor's lien note of $12,500.00.

8. Grantor does not know the exact age of the frame residence situated upon the property. The property is being conveyed in its present condition and Grantees agree to accept it in such condition.

9. Grantees represent that they have no objections or complaints about the condition of the residence, its roof, foundation, electrical wiring or service, gas lines, water lines, sewage disposal system, plumbing, interior, carpentry, windows, paint, doors, or whether it is safe and habitable.

10. Grantees acknowledge that before buying this property they should have the residence inspected and examined by persons familiar with construction and the Building Codes of the City of Dallas and that they also should seek the advice of an attorney of their own choosing if they do not understand this deed.

11. Grantees further acknowledge they understand the Deed and the foregoing special disclosure, disclaimers, limitations, conditions and explanations.

Witness their hands at Dallas, Texas this 25th day of April, A.D., 1994.

s/Ratsavong Sourivong
Sourivong Ratsavong

s/Fong
Fong Souphankaisy

(Acknowledgment)

STATE OF TEXAS)
COUNTY OF DALLAS)

This instrument was acknowledged before me on the 25th day of April, A.D. 1994.

Robert W. Finklea
Notary Public, State of Texas
My Comm. Expires 9-30-96

s/Robert W. Finklea
Notary Public, State of Texas

94082 06032

Filed
94 APR 29 PM 3:32
EARL BULLOCK
COUNTY CLERK
DALLAS COUNTY

Any provision herein which restricts the sale, rental or use of the described real property because of color or race is invalid and unenforceable under Federal Law

STATE OF TEXAS COUNTY OF DALLAS

I, hereby certify this instrument was filed on the day and time stamped hereon by me and was duly recorded in the volume and page of the named records of Dallas County, Texas as stamped heron by me.

April 29, 1994

seal s/Earl Bullock
County Clerk, Dallas County, Texas

Dallas Central Appraisal District
Residential Property

Entered into evidence on Dec. 14, 2004 at Trial 68th District Court Dallas County, Texas

Account Number: 00000553048000000

PROPERTY LOCATION DATA

Street Address: 610 NEOMI ST
Mapsco: 57-Q
Neighborhood Code: D13

VALUATION DATA

Tax Year: "Certified 2002"	**Tax Agent:**	n/a-
Total Improvement Value:		$25,590 00
Total Land Value:		$6.500.00
"Certified 2002" Total Market Value		$32,090 00
Special Assessment:		$0.00
Capped Homestead Value:		$0.00

OWNERSHIP DATA

Owner Name: RATSAVONG SOURIVONG &
Address: FONG SOUPHANKAISY
Street: 611 Neomi St.
City: DALLAS **State:** TX **ZIP:** 752175134

LEGAL DESCRIPTION

Legal Line 1: Home Gardens
Legal Line 2: BLK N/6256 LOT 14
Legal Line 3:
Legal Line 4: VOL94082/6027DD042594 CO-DALLAS

Excerpts from Trial
on Dec. 15, 2004
in the 68th District Court
Dallas County, Texas

Trial Excerpts from Petitioner Husband Von Ratsavong's December 15, 2004 Trial Cross Examination(questions by Respondents attorney Alex Bickley, answers by Mr. Von Ratsavong, objections by Petitioners' attorney Mr. Timothy Mitchell):

Page 44 lines 20 through 25 and Page 45 line 1

MR. BICKLEY: Your Honor, we offer them in evidence to show that they were friendly after he moved into the house. They were visiting with each other and taking pictures together.

MR. MITCHELL: If that's for the sole purpose, then I don't have a problem.

THE COURT: Okay. Admitted.